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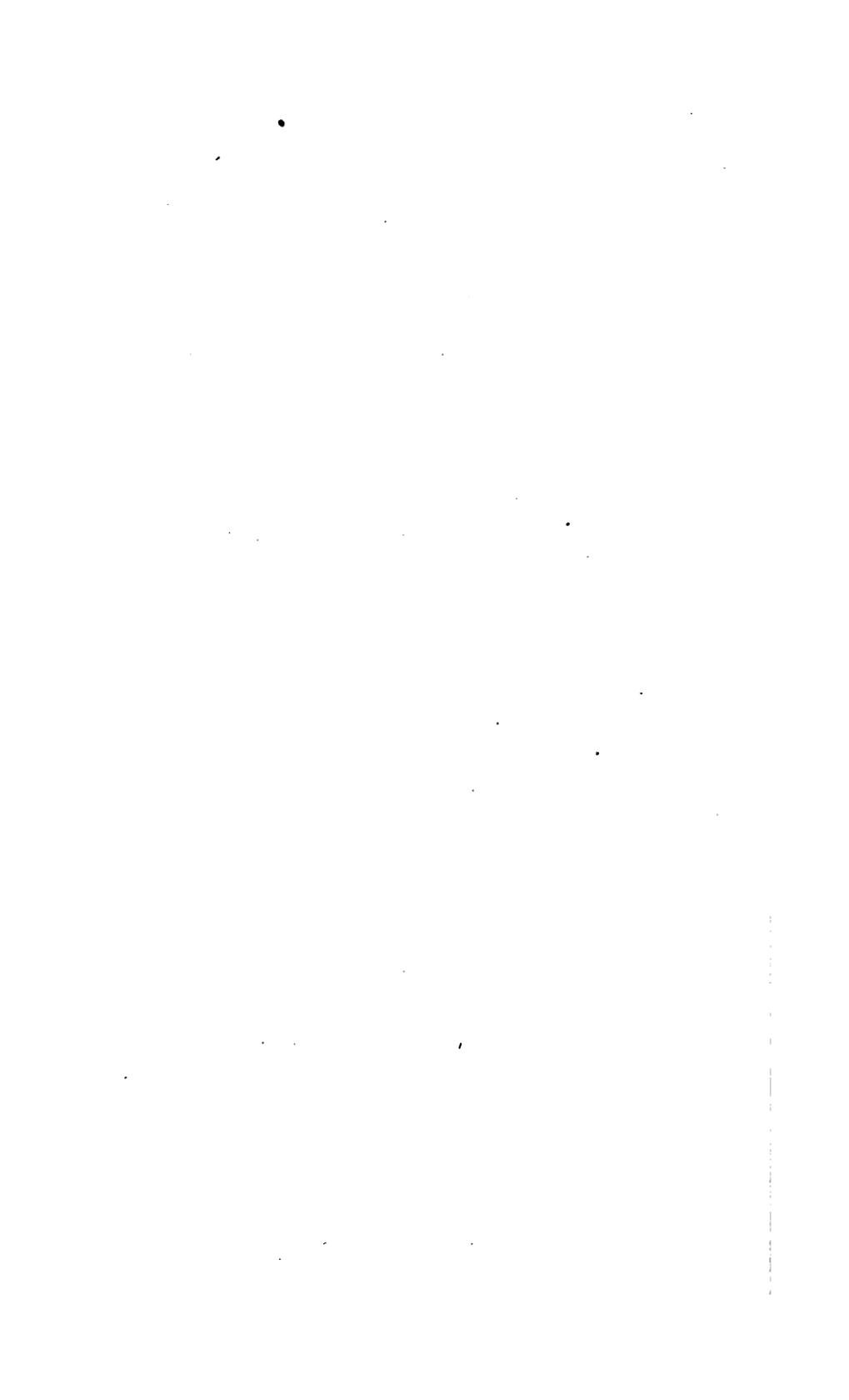
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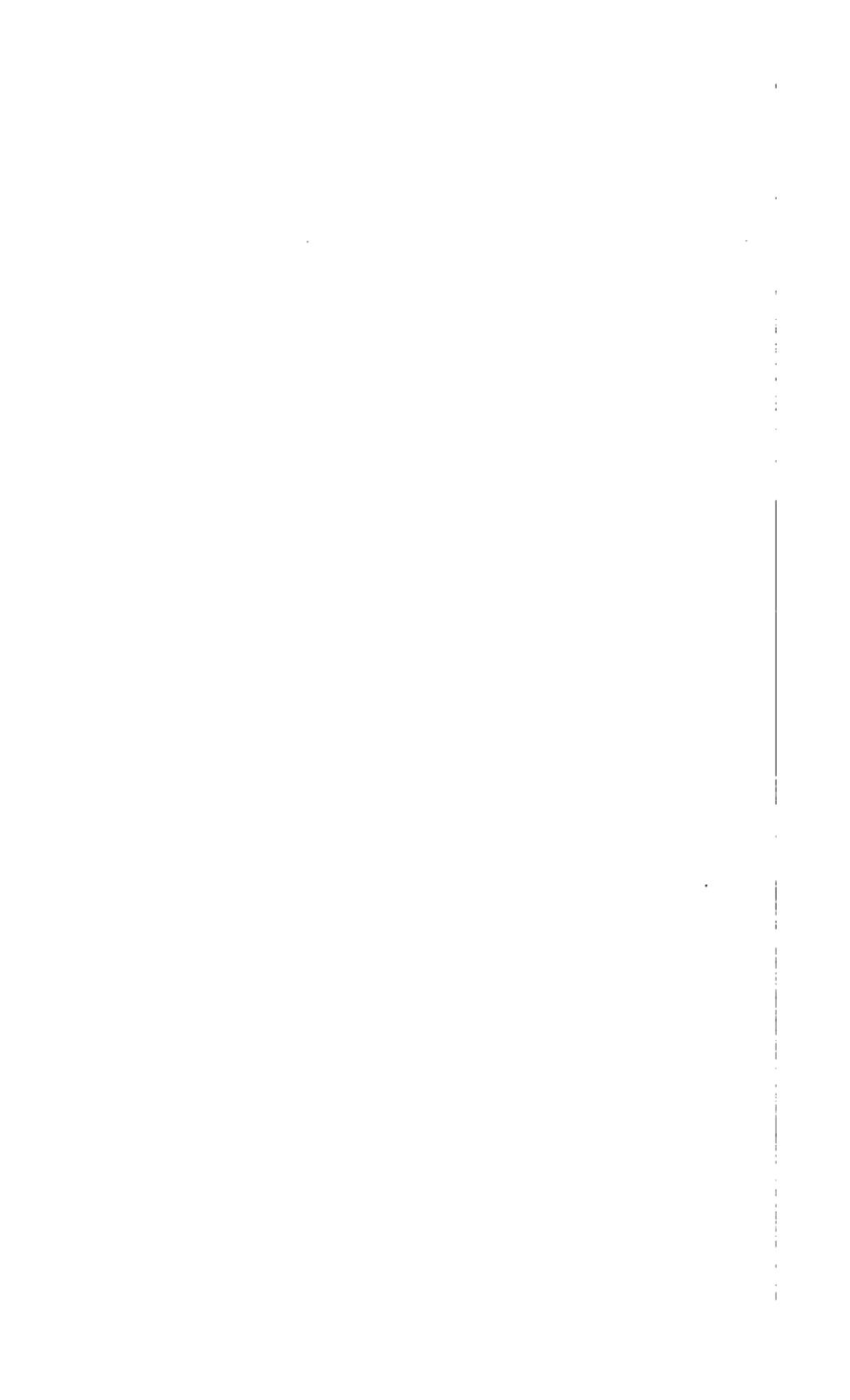
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PREFACE.

A **LARGE** edition of this Work, and a larger impression of the Poaching Prevention Act, 1862, having long since been disposed of, a Second Edition has been urgently called for.

In editing the present Edition, I have carefully revised the Work, and made considerable additions and many improvements, by more copious Notes and new Chapters on branches of the subjects not in the previous edition, bringing the whole, with the Cases, down to the commencement of the Shooting Season.

Among the new Chapters and Sections are those treating of the Scotch and Irish Game Laws (XVIII., p. 225, and XIX., p. 255); Property in Game and other Wild Animals (I., p. 26); Actions of Trespass at Common Law (VII., Sect. 2, p. 108); the Poaching Prevention Act, 25 & 26 Vict. c. 114 (XVI., p. 196), and the Poisoned Grain Prohibition Act, 1863 (IX., Sect. 2, p. 123).

The Scotch and Irish Fishery Acts, referred to at p. 327, would, but for their great length (equal to half, at least, of this Volume), have been in-

serted *in extenso*, an abstract being of very little practical use.

The Report or Resolutions of the Committee of the House of Commons on the Game Laws, in 1846, have also been inserted in the Introduction (pp. 19—23), and I have there ventured to offer some suggestions (pp. 23—25) for simplifying and amending the Game Laws, if it should be deemed expedient to alter them at any future period.

I trust, therefore, that this Edition will be found to be an improved and more useful one than its predecessor.

G. C. O.

LONDON,

17th September, 1863.

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TO THE FIRST EDITION.

THE object of this little Treatise is in some measure to supply—what has long been felt to be wanted—a new and succinct, yet complete, Work on the existing Laws as to Game, Rabbits, Deer, Fish and Fisheries, Dogs and Birds; and which, having had a long experience in the administration of the Game Laws, and written other works of a like practical nature, which are in extensive use,¹ I was solicited to prepare for the press.

As the law upon that portion of the Work which relates to the granting of Game Licences was materially altered and improved by the 23 & 24 Vict. c. 90, and that in respect of Fisheries and other portions of it having also been recently consolidated by the important Salmon Fishery Act,² and the Criminal Law Consolidated Statutes, which have just received the Royal Assent, a convenient opportunity presents itself for its publication.

Although the term “Handy Book” adopted in the title page is not new, I wish it to be understood that it is used rather to denote the portability of the Work than as implying its contents to be a

¹ *Vide* a List of the Author's other Works facing the title page.

² This act, the 24 & 25 Vict. c. 109, is set out in full at pp. 293—320.

mere superficial, and, therefore, incomplete, statement of the Laws upon which it treats; and that my object in its preparation has been to render it of equal practical utility to the legal profession as to the magistracy and country gentlemen, since it comprises the several enactments *in extenso*, and cites the decisions and other authorities with sufficient copiousness for all ordinary purposes.

The new arrangement of the matter in chapters, with the necessary forms, will, I think, be found the most convenient for use, as presenting at one view the whole law upon any branch of it, to which also other facilities for reference are afforded by the Introduction, Tables of Contents, Cases and Statutes, and a full Index.

I trust that my expectations of the general usefulness of this little Volume, upon which I have bestowed every possible care, will be realized, by its receiving a fair share of the patronage usually accorded to works on the Game Laws.

I should not omit to acknowledge here, that I am indebted to other and larger publications³ for information and assistance in the compilation of the Book, and to which I have invariably referred when quoting them.

G. C. O.

LONDON,
16th August, 1861.

³ Chitty's Game Laws; Bell's G. L. 1839; Locke's G. L. 1856; Woolrych's G. L. 1858; Clarke's G. L. 1843; .Patterson's G. L. 1861; Irvine's Scotch G. L. 1855; and Levinge's Irish G. L.

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38, note. *Taylor v. Newman* is reported 32 L. J. (N. S.) M. C. 186.

42, 2nd line from bottom of text, for "IV." read "VI."

47, note ³, 7th line, for "note ²," read "note ³, p. 116."

84, note, 2nd line, dele the word "note."

141, note. *Wilson v. Stewart* is reported 32 L. J. (N. S.) M. C. 198.

302, 7th line from bottom, for "Moreton" read "Moulton."

A

H A N D Y B O O K

O F T H E

G a m e a n d F i s h e r y L a w s .

I N T R O D U C T I O N .

We purpose confining these introductory observations to a summary of the most important portion of our work, the "Game Laws" only of the United Kingdom : the other parts of the work, as to Fisheries, Dogs and Birds, scarcely requiring any preliminary remarks here, the enactments as to them being more simple and concise. The first seventeen chapters will treat of the English Game Laws, portions of which relate to the whole kingdom ; separate chapters (XVIII. and XIX.) being devoted to those enactments which relate exclusively to Scotland and Ireland.

*The Game
Laws.*

The principal statutes which now relate to game, rabbits, &c., in the several parts of the United Kingdom, and to the licensing of persons to kill them, and to deal in game, are :—

<i>E n g l a n d .</i>	<i>S c o t l a n d .</i>	<i>I r l a n d .</i>
1 & 2 Will. 4, c. 32. ¹	2 & 3 Will. 4, c. 68.	13 Rich. 2, c. 13.
11 & 12 Vict. c. 29.	11 & 12 Vict. c. 30.	10 Will. 3, c. 8.
9 Geo. 4, c. 69. } 7 & 8 Vict. c. 29. ² }	9 Geo. 4, c. 69. } 7 & 8 Vict. c. 29. }	9 Geo. 4, c. 69. } 7 & 8 Vict. c. 29. }
23 & 24 Vict. c. 90. ²	23 & 24 Vict. c. 90.	23 & 24 Vict. c. 90. 5 & 6 Vict. c. 31.
25 & 26 Vict. c. 114. ²	25 & 26 Vict. c. 114. 1621, c. 31. 1707, c. 13. 13 Geo. 3, c. 54.	23 & 24 Vict. c. 113, s. 43. 25 & 26 Vict. c. 114. 27 Geo. 3, c. 35. 37 Geo. 3, c. 21. 26 Vict. c. 19.

¹ This Day Poaching Act, passed on the 5th Oct., 1831, repealed, by s. 1, all the previous statutes, twenty-seven in number. It took effect, generally, from the 1st Nov., 1831.

² The Night Poaching Acts, as well as the 23 & 24 Vict.

Game Licences Act,
23 & 24 Vict.
c. 90.

The 23 & 24 Vict. c. 90, effected a great improvement in the grant of the necessary government authorities, enabling persons to kill and deal in game, by repealing the previous assessed tax duties on game certificates and certificates to deal in game, and imposing in lieu thereof a lower scale of duties on licences³ to kill game, woodcocks, snipes, quails, landrails, conies and deer, and on licences to deal in game, to be respectively granted by excise or inland revenue officers, instead of by the clerks to the commissioners of assessed taxes of the district. That statute swept away the authority of the surveyors of taxes to make surcharges of game certificate duty, which formerly was so frequent a source of contention between them and the country commissioners, and of appeal to the judges for their decision, on which appeals, however, the commissioners were as often pronounced to be "right" as "wrong,"⁴ and there is now no charge or assessment of duty in respect to game licences or certificates.

What is
"game."

The animals and birds which come within the popular definition of "game" in each part of the United Kingdom are generally the same in each, though named differently in the acts, viz.:—

<i>In England.</i>	<i>In Scotland.</i>	<i>In Ireland.</i>
Hare.	Same as in England.	Deer.
Pheasant.	(9 Geo. 4, c. 69, s. 18.)	Hare.
Partridge.		Pheasant.
Grouse.		Partridge.
Heath or Moor game.	Muir fowl or tamagan.	Grouse.
		Moor game.

c. 90 (Game Licences), and 25 & 26 Vict. c. 114 (Poaching Prevention), apply throughout the United Kingdom.

³ The term "licence to kill game" is substituted for the term "game certificate" in the 1 & 2 Will. 4, c. 32 and 11 & 12 Vict. c. 29 (23 & 24 Vict. c. 90, s. 6, Chap. V.); but the word "certificate" is retained in Ireland.

⁴ The terms of the written judgments of the judges here alluded to, being simply—"We are of opinion that the deter-

<i>In England.</i>	<i>In Scotland.</i>	<i>In Ireland.</i>
Black game. Bustards. (1 & 2 Will. 4, c. 32, s. 2; 9 Geo. 4, c. 69, s. 13.)	(13 Geo. 3, c. 54.)	(Black game.) Landrail. Quail. Wild turkey or bustard. Heath game. (Pharmagan.) (27 Geo. 3, c. 35, ss. 4, 6.)

The Night Poaching Act, 9 Geo. 4, c. 69, and the Game Licences Act, 23 & 24 Vict. c. 90, have the effect, however, of importing, for particular purposes, the English definition of "game" into the other parts of the kingdom.⁵ Some statutes treat animals as game which are not considered so by others, and the acts known as the "Game Laws" and the Revenue Acts extend in some cases to other animals and birds than game proper. For example, in England, woodcocks, snipes, landrails, quails and conies or rabbits in respect to trespass, and the eggs of a swan, wild duck, teal and widgeon, are protected by these laws. In Scotland, deer, roe, woodcocks, snipes, quails, landrails, wild ducks and conies are likewise protected by these laws. In Ireland, these laws extend to deer, the eggs and nests of partridges, pheasants, grouse, quail, landrail, moor game, heath game, wild duck, or other wild fowl, widgeon, plover, snipe, house dove or

"Game" not
the same
animals
throughout
the kingdom.

mination of the commissioners is wrong [or is right]."
Many of the decisions, however, on these appeals are still necessary to be referred to, and are given in this work.

* The 9 Geo. 4, c. 69, is applicable to the whole of the United Kingdom, so far as Night Poaching is concerned; the 23 & 24 Vict. c. 90, s. 13, imports the definition of game contained in 1 & 2 Will. 4, c. 32, s. 2, into Scotland and Ireland, so far as relates to game dealers and dealing in game, and as a necessary consequence the close time in England will apply to birds of game taken in those parts; but the actual *taking* of them will be governed by the local acts. See Chap. X.

pigeon, and rabbits. For the purposes of the Poaching Prevention Act of 1862, 25 & 26 Vict. c. 114 (Chap. XVI.), the term "game" is to include, in addition to the animals (excepting bustards) above described in the English definition, rabbits, woodcocks, snipes, and the eggs of pheasants, partridges, grouse, and black or moor game. The 23 & 24 Vict. c. 90, as to licences and certificates to kill game, &c., extends, besides game proper, to woodcocks, snipes, quails, landrails, conies, and deer, taken throughout the United Kingdom. With this complication of enactments as to what is "game" in each part of the kingdom, arises the question whether birds which come from other parts of the kingdom or from foreign parts, and are caught or pursued here *feræ naturæ*, being of the same species as our birds of game, are within the penal enactments of our laws as to killing, taking, or pursuing them.⁶

Qualification to kill game.

Scotland.

Ireland.

Since the 1 & 2 Will. 4, c. 32, there is no estate or other qualification in England necessary to enable a person to kill game on his own land or another's, except the revenue licence ; but in Scotland and Ireland, certain qualifications besides the revenue licence or certificate are necessary : in Scotland it is the ownership of a ploughgate of land in that country, estimated at about 100 acres Scotch ; but the owner may give permission to another to kill game, who is thereby protected.⁷ In Ireland, the property qualification to kill game is a freehold estate of 40*l.* per annum, or personal estate of 1,000*l.*; and no labourer, artificer, or layman, who has not lands of 40*s.* a year, or a priest, 10*l.* a year, can use engines, &c. to take game, &c. Also to enable persons there to keep certain game dogs, they must have an estate of freehold of the yearly value of 100*l.* or personal estate of 1,000*l.*; except

⁶ The writer ventures to express his own opinion that our laws extend to them.

⁷ Act 1621, c. 31; Barclay's Dig. 412.

dogs kept for a manor or with the written consent of the lord.⁸

As to the right of property in game and other wild creatures protected by the game and other laws, the subject is treated of at some length in the First Chapter, by which it will be gathered that the owners of the soil have a qualified property in game, while on their lands, but that is not property for the purposes of larceny. Lords of manors on the wastes and commons of the manors, and, in some cases, even where they have been enclosed, and as against the owners of cattle-gates, have the right to the game; also the owners of lands and occupiers thereof, except in certain cases it be reserved to the grantor or landlord, or there be a right of chase or free warren over the lands by prescription or express grant, i. e., the right of entering to kill game, without being subject to be sued as trespassers;⁹ and these are respectively recognized by various provisions in the 1 & 2 Will. 4, c. 32, treated of in Chapter II., as to free warrens, manors, &c.; Chapter IV., as to gamekeepers; and Chapter VI., as to tenant's rights. Proprietors of warrens have the conies. Occupiers also have, when not reserved to their landlords, the right to authorize others to kill hares on the lands without such persons being liable to take out an excise licence to kill game.¹⁰ In all these cases the right cannot be exercised unless the game, rabbits or conies are on the proprietor's lands; for when

⁸ 10 Will. 3, c. 8, ss. 2, 8, 9, 10; 13 Rich. 2, c. 13; 27 Geo. 3, c. 35, s. 8 (Chap. XIX., Sect. 2).

⁹ See 1 & 2 Will. 4, c. 32, s. 10, *Ewart v. Graham, Bart.*, and *Bruce v. Hellinwell*, as to lords of manors; and *Earl of Lonsdale v. Rigg*, as to owners of cattle-gates, Chap. VI. The franchises or royalties relating to game, preserved by the 1 & 2 Will. 4, c. 32, s. 10, are, the *forest*, the *park*, the *free chase* and the *free warren*. These privileged places are explained in Chap. II.

¹⁰ 11 & 12 Vict. c. 29, Chap. VI.; in Scotland, see 11 & 12 Vict. c. 30, Chap. XVIII., Sect. 8.

Introduction.

they leave, and are not driven from thence, they cease to be his (except in the case of a free warren), and he cannot justify the taking of them. The same principles apply generally to deer as to game in this respect. The subject, however, is surrounded by difficulties, and hardly admits of a summary being relied on.

What licences are required to kill game, deer, &c.

Forfeiture of licence.

Any person to be legally entitled in England to use any dog, gun, net, &c., for the purpose of taking or killing any game or any deer, whether or not he be entitled to it in whatever capacity, must take out an excise licence to enable him to do so, instead of the "game certificate" formerly granted; but there are certain exceptions and exemptions to this rule, viz., the coursing of hares (which are game), and the killing of them by those entitled to the game; the killing of deer by hunting or in inclosed lands by the owner or occupier, or by his direction; and persons aiding or assisting a licensed person using his own dog, &c., in so doing. In Scotland and Ireland we have seen a property qualification is necessary in addition, and in the latter the term "certificate" instead of "licence" is retained. Such licence or certificate is also required for the taking of any woodcock, snipe, quail, landrail or coney, but not for the taking of woodcocks and snipes with nets or springs, the taking or destroying of conies by the proprietors of warrens, or tenants of lands, or by their direction or permission; nor is it necessary to be held by persons who only aid and assist a licensed person using his own dogs, &c., in the taking of game, &c.;¹¹ nor is a licence required for the killing of swans, wild ducks, teal or widgeons, although their eggs are protected in the breeding season in England and some of them in Ireland, but not in Scotland. These excise licences, when

¹¹ 23 & 24 Vict. c. 90, ss. 2, 4, 5, 17. As to Ireland, 5 & 6 Vict. c. 81, also applies (Chap. V.). By 23 & 24 Vict. c. 113, s. 43, it is not necessary to have a certificate to kill rabbits there. See Chap. V.

granted, are forfeited on a conviction for an unlawful trespass in the daytime on land in search or pursuit of game, &c., in England and Scotland, but not in Ireland.¹²

The amount of duty on the licences or certificates to kill game, &c., varies with the period for which they are in force. They are taken out after the 5th of April, and expire on the 31st of October in the same year, or on the 5th of April in the following year. All game licences and certificates must be dated on the day on which they are actually issued; those which expire on the 5th of April (for which the sum of 3*l.* is payable) are printed on *red* tinted paper; those which expire on the 31st of October (the duty on which is 2*l.*) are printed on paper tinted *green*; and those which are taken out on or after the 1st of November, and expire on the 5th of April following (the duty on which is also 2*l.*), are printed on *yellow* tinted paper.

The gamekeeper's licence for England or Scotland will expire on the 5th April annually, the duty, in addition to the assessed tax as a servant, being 2*l.*¹³ to kill within the manor, or, if out of it, the same as any other person; and on a change of gamekeeper or revocation of deputation, the licence may be transferred to the successor, free of duty, by indorsement made by the excise officer.¹⁴

It should also be observed here, that any person

Where licence in force.

¹² 23 & 24 Vict. c. 90, s. 11, Chap. V.

¹³ 23 & 24 Vict. c. 90, ss. 2, 7, 13. In Ireland, gamekeepers are charged the same duty as other persons. (See Chap. V.) The inland revenue officers are required by their "Instructions" from the Board to afford every information to persons desirous of taking out game licences, for which personal application is not required, but it may be in writing, specifying the date, the name at full length, and residence of the person for whom the licence is required, and left at the residence of the supervisor of excise or distributor of stamps. In the case of the grant of a gamekeeper's licence, the supervisor acquaints the surveyor of taxes thereof in order that the master may be charged for the duty on a servant.

¹⁴ 1 & 2 Will. 4, c. 32, s. 6; 23 & 24 Vict. c. 90, ss. 2, 7, 8, 9, Chap. V.

Introduction.

licensed in his own right may kill game anywhere in the United Kingdom, subject to the law of trespass.¹⁵

Tax on dogs. There is also a tax on the dogs kept or used for these and other purposes in England and Scotland only.¹⁶

Licence to deal in game. Another excise licence, expiring on the 1st of July, is required for the buying and selling of game (in its restricted sense, but not for woodcocks, snipes, quails, landrails, conies or deer), after the dealer has obtained a licence from the justices in special sessions for that purpose, and the provisions in this respect in England are now applicable to Scotland and Ireland, which before had no statute law upon the subject; and there are penalties on persons dealing in game without any licence.¹⁷

Licence to kill deer. For the first time, it is believed, in England and Scotland the law now requires a government licence to be taken out for the taking or killing of any deer (in the same manner as game), by other persons than the owners or occupiers of inclosed lands when the deer is in such lands, or is killed by their direction or permission, and also when it is not pursued and killed by hunting with hounds.¹⁸

Seasons and days of sporting and dealing in game. The killing or taking of game on improper days, or of birds of game during the breeding seasons, is prohibited by heavy penalties, viz., in England no game is to be caught on a Sunday or Christmas-day, under a penalty of 5*l.*; nor in Ireland game, wild fowl, &c., on a Sunday, under like penalty.¹⁹

Season for taking game. As the season for taking game is different in each part of the kingdom, the following table or enumera-

¹⁵ 23 & 24 Vict. c. 90, s. 18; 1 & 2 Will. 4, c. 32, ss. 5, 6, Chap. V.; Scotland, 2 & 3 Will. 4, c. 68, s. 1, Chap. XVIII.; Ireland, 27 Geo. 3, c. 35, s. 10, Chap. XIX.

¹⁶ See Chap. IV., note 4.

¹⁷ 1 & 2 Will. 4, c. 32, s. 18; 23 & 24 Vict. c. 90, ss. 13, 14, 15; and 24 & 25 Vict. c. 91, s. 17, Chap. X. See Chap. XIX., Sect. 9, also, as to Ireland.

¹⁸ 23 & 24 Vict. c. 90, ss. 2, 4, 5, Chap. V.

¹⁹ 1 & 2 Will. 4, c. 32, s. 3, Chap. III.; Ireland, 27 Geo. 3, c. 35, s. 4, Chap. XIX., Sect. 5.

ration of the *prohibited* periods in respect to each bird or animal, as named in the acts respectively, may be found more useful than a lengthened detail in this place:—²⁰

	<i>England.</i>	<i>Scotland.</i>	<i>Ireland.</i>
<i>Black game</i> ..	10th Dec. and 20th Aug., or 1st Sept. in Somerset, Devon, or New Forest.	As "heath fowl."	As "heath fowl."
<i>Bustard or wild turkey</i>	1st March and 1st Sept.	No close time.	10th Jan. and 1st Sept.
<i>Deer, male</i> ..	No close time.	No close time.	10th June and 20th Oct.
„ <i>fallow</i> ..	Id.	Id.	Michaelmas and 20th June.
<i>Grouse or red game</i>	10th Dec. and 12th Aug.	As "heath fowl" or "muir fowl."	10th Dec. and 20th Aug.
<i>Heath fowl</i> ..	.. ..	10th Dec. and 20th Aug.	10th Dec. and 20th Aug.
<i>Heath or moor game</i>	No close time.	.. ..	10th Dec. and 20th Aug.
<i>Landrail</i>	Id.	No close time.	10th Jan. and 20th Sept.
<i>Muir fowl or ptarmigan</i>	.. ..	10th Dec. and 12th Aug.	10th Dec. and 20th Aug.
<i>Partridge</i>	1st Feb. and 1st Sept.	Same as England.	10th Jan. and 20th Sept.
<i>Pheasant</i>	1st Feb. and 1st Oct.		10th Jan. and 1st Sept.
<i>Quail</i>	No close time.	No close time.	10th Jan. and 20th Sept.

As these only are mentioned in the several statutes, it follows that as regards hares, conies or rabbits, plovers, snipe, swans, teal, widgeon, wild duck, wild fowl and woodcock, there is no statutory season

²⁰ The enactments with the penalties must be sought for in the following Chapters: as to England, Chap. III.; Scotland, Chap. XVIII., Sect. 5; and Ireland, Chap. XIX., Sect. 5. For the purpose of dealing in game, we have observed at p. 3, that the English definition of close time is imported into Scotland and Ireland.

assigned to them, or within which it is declared unlawful to kill or take them, in any part of the kingdom. The English law as to dealing in game being extended to Scotland and Ireland, all licensed dealers in game and persons not so licensed are prohibited from dealing in or having possession of birds of game, whether alive or dead, after the expiration of the seasons before stated, i.e., licensed dealers from buying or selling, or having in possession such birds after ten days from the termination of the season, and unlicensed persons from buying or selling also after ten days, or having the same in possession (except in a mew or breeding-place), after forty days from the termination of the seasons respectively.²¹

Sale of game by captors. No person, including a gamekeeper, can at any time sell game to a licensed dealer unless he has taken out a 3*l.* excise licence,²² neither can a person not licensed to kill, sell game to an unlicensed or licensed person, except incurring heavy penalties.²³

Appointment of game-keepers; their powers. The 1 & 2 Will. 4, c. 32, as to England only, contains a variety of provisions authorizing a lord or lady of a manor, lordship or royalty, or a steward of the crown of a manor, &c., appertaining to her Majesty, or a body corporate, to appoint game-keepers to preserve and kill the game within the limits of a manor, &c., for the use of the lord, &c., as well as to seize dogs, nets and engines, there found, of persons not licensed to kill game;²⁴ and such lord, &c., may also grant deputations of a like kind to other persons, whether they be their servants or not. These appointments and deputations are to be registered with the clerk of the peace of the county in which the manor, &c. is, other-

²¹ 1 & 2 Will. 4, c. 32, s. 4; 23 & 24 Vict. c. 90, s. 13, Chap. X.

²² 1 & 2 Will. 4, c. 32, ss. 6, 17, Chap. XI.

²³ 1 & 2 Will. 4, c. 32, s. 25, Chap. XI.

²⁴ Chap. IV. In Ireland, similar powers are given to lords of manors; see 10 Will. 3, c. 8, ss. 15, 16, Chap. XIX., Sect. 4. In Scotland, manors are not recognized; but land-owners grant deputations, although not under any statute. (Chap. XVIII., Sect. 4.)

wise they will be of no effect.²⁵ A gamekeeper must have a licence to kill game like any other person, except, that to kill merely within his manor, in England, the duty is 2*l.*, while, if he is to sell game (whether authorized to do so by his master not), or to kill out of his manor, a 3*l.* licence is necessary;²⁶ and if he sell game not on account of, and without the written authority of his master, he incurs the penalty imposed for selling it without having a licence to kill, or if he kill, &c., out of his manor, not having a 3*l.* licence, he is liable to the penalty for not taking out a licence.²⁷ His authority is limited to his manor, and to the seizure of dogs, nets, &c., while being used for the purpose of taking, or while pursuing game thereon;²⁸ but he may demand to see the licence of a person sporting on his manor, without showing his own, and take a copy of it, and require such parties to disclose their names, &c., which they may refuse to do at the risk of a penalty.²⁹

In England, a tenant of lands under a lease or agreement made previously to the 1st of October, 1831,—except game be reserved therein to him, or a fine had been taken on the granting of the lease, &c., or the lease was for a term exceeding twenty-one years,—has not the right to the game; but if the lease be made since the 1st of October, 1831, the tenant has the game, unless it be therein reserved to the landlord; and, indeed, so have all occupiers not under leases, as they had before their right was curtailed by the passing of the 1 & 2 Will. 4, c. 32.

²⁵ 1 & 2 Will. c. 32, ss. 13, 14, 15, 16, Chap. IV. As far as Scotland is concerned, there is no statutory regulation for registering deputations; but the stamp office insist on their registration. (Barclay's Dig. 447; Irvine on Scotch Game Laws, 156, 157.)

²⁶ 23 & 24 Vict. c. 90, ss. 2, 6, 7, Chap. V. In Ireland, see note 13, p. 7.

²⁷ 1 & 2 Will. 4, c. 32, ss. 6, 17; 23 & 24 Vict. c. 90, s. 13, Chap. IV.

²⁸ 23 & 24 Vict. c. 90, ss. 2, 9, 10, Chap. V.

²⁹ 23 & 24 Vict. c. 90, s. 10, Chap. V.

The landlord, when he has the exclusive right, may authorize others, who have licences to kill game, to sport over the lands, but a tenant, not having a right, is liable to a penalty if he sports or authorizes another person to do so, who also is liable to the penalty imposed for an illegal trespass.³⁰ A lord of a manor also is liable to the action of trespass for sporting over land not in his own occupation.³¹ The provisions of the 1 & 2 Will. 4, c. 32, hereon do not affect the tenant's right to kill and take, by himself or servants, woodcocks, snipes, quails, landrails and conies, which are his, although the "game" be reserved to the landlord, unless, indeed, there be some stipulation in the lease to the contrary, and (as respects rabbits) some right of free warren over the lands; but he must take out a licence to kill quails and landrails, as well as woodcocks and snipes, if he take the two latter otherwise than with nets or snares. As respects hares (which are within the definition of "game"), the tenant has the right to kill them, if they are not reserved to the landlord, and in addition, he may by a written authority, registered with the clerk to the magistrates of the district, authorize any other person to do so, who is exempted thereby from taking out a licence to kill game.³² The law in Ireland is nearly the same as in England, but in Scotland it is different; these differences must be reserved for consideration in future chapters (XVIII. and XIX.).

Trespasses committed in sporting.

The authority given by the excise licence to kill game, &c., is subject to an action, or the summary proceeding before justices for the penalty of 40s. in England and Scotland, for any trespass in search or pursuit of game, &c., committed by the holder of such licence on land over which he has no right to

³⁰ 1 & 2 Will. 4, c. 32, ss. 7, 8, 11, 12, 30, Chap. VI.

³¹ *Pickering v. Noyes*, 4 B. & C. 639; 7 Dow. & Ry. 49; *Brown v. Taylor*, 10 East, 189; *Woolrych*, G. L. 88; Chap. VII., Sect. 2.

³² 11 & 12 Vict. c. 29; 23 & 24 Vict. c. 90, s. 5, Chap. VI. As to Scotland, see 11 & 12 Vict. c. 30, Chap. XVIII., Sect. 3.

the game; but the proceedings by way of civil action cannot be resorted to in addition to the summary proceeding. The penalty is 10*l.* in Ireland.³³ As respects occupiers of lands who have the right to kill conies, they have a right also to employ their servants or other persons to do so for them, without such persons being liable to be proceeded against for a trespass, or for the excise penalty if they have not a licence to kill game; but a person availing himself of the permission to shoot over another's lands should first ascertain that the person giving such permission has authority to give it, otherwise he would be liable.³⁴ In England and Scotland, if five or more persons commit a trespass together the penalty is increased from 2*l.* to 5*l.* each offender.³⁵

The English act 1 & 2 Will. 4, c. 32, s. 31, authorizes the person entitled to the game, whether by hiring the shootings, or as landowner, or the occupier, or their gamekeeper or servant, &c., to require trespassers there in the daytime to quit the land, and to tell their names and abodes, and in case of their refusal or return upon the land to arrest them and convey them before a justice within twelve hours to be dealt with; and a like power is given to apprehend night poachers by the 9 Geo. 4, c. 69, s. 2, which applies to the United Kingdom; also by the English act 1 & 2 Will. 4, c. 32, s. 36, game recently killed may be seized and taken from trespassers on land by day or by night, by the owner, &c., for his use. (As to Scotland, see 2 & 3 Will. 4, c. 68, s. 5.) At p. 10, we have referred to the gamekeeper's power to seize dogs, nets, &c. By Constable's the Poaching Prevention Act, applicable to the powers.

Powers to
seize game
and offenders
trespassing.

³³ 1 & 2 Will. 4, c. 32, ss. 6, 30, 46, Chap. VII.; in Scotland, 2 & 3 Will. 4, c. 68, ss. 1, 16, Chap. XVIII.; and as to Ireland, 27 Geo. 3, c. 35, ss. 10, 13, Chap. XIX.

³⁴ *Spicer v. Barnard* and *Padwick v. King*, Chap. VI.; and *Morden v. Porter*, Chap. VII.

³⁵ As to England, 1 & 2 Will. 4, c. 32, s. 30, Chap. VII.; as to Scotland, 2 & 3 Will. 4, c. 68, s. 1, Chap. XVIII.

United Kingdom, a constable (and not a game-keeper) may on a highway stop and search persons he suspects of having been on land in search of game, and having game, guns, &c., in his possession, and may also stop and search any cart suspected of containing game or such articles; and, if game, &c., be found, to proceed against the persons before the petty sessions, where upon conviction they are liable to a penalty of 5*l.* and forfeiture of the game, &c., which may be sold.³⁶ In Ireland there is an additional enactment against higgleries, carriers, victuallers, &c., having game, and not giving a satisfactory account to the justice how they became possessed of it; and so there is in Scotland against unqualified persons having it.³⁷ Except in these instances there is no statutory power,³⁸ to seize game, or to deal summarily with the unlawful possessors of it; nor is there a general authority, upon a conviction under the Game Laws, for the magistrates to order game, whether lawfully seized or not, to be forfeited to the proprietor of it.

Unlawfully taking or destroying game, &c.

Cumulative penalties.

The unlawful taking of game, &c. is punishable in various ways. Those who do so without the excise licence to kill are liable to the excise penalty of 20*l.*,³⁹ and in England the cumulative penalty of 5*l.* under 1 & 2 Will. 4, c. 32.⁴⁰ These are in addition to the penalties for taking game on improper days, or out of season;⁴¹ for all the penalties under the acts are cumulative (there are fewer cumulative penalties in Scotland and Ireland), if the act done embraces more than one offence under different

³⁶ 25 & 26 Vict. c. 114, Chap. XVI.

³⁷ 27 Geo. 3, c. 35, ss. 6, 9 (Ireland, Chap. XIX.); 13 Geo. 3, c. 54, s. 3 (Scotland, Chap. XVIII.).

³⁸ There is the common law authority, however, to seize game caught and killed on one person's land, wherever it is found, as recognized in the case of *Blades v. Higgs, post*, Chap. I.

³⁹ 23 & 24 Vict. c. 90, s. 4, Chap. V.

⁴⁰ 1 & 2 Will. 4, c. 32, s. 23, Chap. VIII.

⁴¹ See *ante*, pp. 8, 9.

statutes or sections; as, for example, if an unlicensed person trespass in pursuit of game on a Sunday, and kill any game, he may be convicted in four penalties,—the excise penalty of $20l.$, under 23 & 24 Vict. c. 90, s. 4, and $5l.$ cumulative under 1 & 2 Will. 4, c. 32, s. 23; $2l.$ in England under s. 30, or Scotland under 2 & 3 Will. 4, c. 68, s. 1, for the trespass, and $5l.$ under s. 3 of 1 & 2 Will. 4, c. 32, for taking on the Sunday; and possibly to a fifth, if a bird of game, and it be taken out of season, of $1l.$ for every head of game taken under s. 3 also. In Scotland, it is $5l.$ per head under 13 Geo. 3, c. 54, s. 1, and so it is in Ireland by 27 Geo. 3, c. 35, s. 4, and 37 Geo. 3, c. 21, s. 2. The Poisoned destruction of game by placing poison or poisonous grain, &c. ingredient, or poisoned grain, seed or meal, on grounds or exposed situations, is prohibited by various penalties in the game and other acts.⁴²

Persons not having the right to the game cannot take eggs. in England take the eggs of any bird of game, or of any swan, wild duck, teal or widgeon out of the nest on any land, or have such eggs in possession, without incurring a penalty of not exceeding $5s.$ for each egg. There is no such provision in Scotland, but there is in Ireland.⁴³ Occupiers in England, Occupier. who are not entitled thereto, are specially made liable to a penalty for taking game, or giving permission to others to do so.⁴⁴ The taking of game Night poach- or rabbits by night, in any part of the kingdom, ing. whether on land or on roads, is punishable by long imprisonment in addition to sureties not so to offend again, which are increased on a second and subse-

⁴² In England, 1 & 2 Will. 4, c. 32, s. 3; 11 & 12 Vict. c. 29, s. 5; in Scotland, 11 & 12 Vict. c. 30, s. 4; as to Ireland and other parts, by the Poisoned Grain Prohibition Act, 1863, 26 & 27 Vict. c. 113, s. 3, Chap. IX.

⁴³ As to England, 1 & 2 Will. 4, c. 32, s. 24, Chap. IX.; as to Ireland, 27 Geo. 3, c. 35, s. 4, imposes a penalty of $5l.$, Chap. XIX., Sect. 5.

⁴⁴ 1 & 2 Will. 4, c. 32, s. 12, Chap. VI.

quent conviction⁴⁵. So, likewise, is the unlawful taking of hares and rabbits in warrens and breeding grounds by day or night punishable summarily as well as indictable (Chap. XV.).

**Tabular list
of the penali-
ties.**

A tabular list of the various penalties and punishments enacted by the several acts cited or set out as to England, is given in Chapter XXIV., the proceedings to recover which are treated of in the following manner:—for those under the 1 & 2 Will. 4, c. 32, and in actions, a separate chapter (XII.) is given; for those which are described as excise penalties (recoverable only on the information of a duly authorized officer of inland revenue), Chapter XVII. embodies a succinct view of the practice;⁴⁶ while for those under the other English statutes the procedure is shortly sketched out in the chapter where the offences are stated.

**For Scotland
and Ireland.**

Tabular lists of the penalties in Scotland and Ireland, and the procedure there for their recovery, are given in separate sections of the chapters (XVIII. and XIX.) as to the Game Laws in those parts of the kingdom.

**Rating of
shooting.**

Although a right of shooting is a tenement, analogous to a right of common or piscary (which is not rateable) and is a separable right from the mere agricultural use of land, the hirer of it is not rateable in respect of it distinct from the land; and, therefore, where the landlord retains that right, the tenant is only liable in respect of that he beneficially enjoys, although the value of the shootings may be much greater than the agricultural value of the lands; but if a tenant pays an increased price in respect of his land for the privilege of killing

⁴⁵ 9 Geo. 4, c. 69, s. 1; 7 & 8 Vict. c. 29, s. 1, Chap. XIII.

⁴⁶ Officers of inland revenue detecting persons violating the law are to inform the collector or supervisor, who are directed by the Instructions of the Board to investigate the circumstances and state the facts to the Board for directions as to proceedings against the offenders. (Instructions, pp. 10, 11.)

and taking game on it, the overseers, in making the rate, may take that increased price into consideration."⁴⁷

Having given a summary of the enactments, we propose to add some observations upon other matters in relation to the game laws, the report of the last Committee of Inquiry, statistics of offences committed, and certain suggestions for an amendment of these laws.

The Secretary of State for the Home Department has, since the year 1844, exercised a supervision over the game law convictions, to the extent of examining all commitments from justices and petty sessions, and which are sent to him by the gaolers pursuant to directions from the Home Office. Where the commitments appear to have been illegal on account of penalties or sentences being in excess of those allowed by law, or the conviction is by one magistrate where two were necessary, or otherwise (but not on account of defects in form), the Home Secretary has ordered the discharge of the defendants, or commuted the sentences; or where hard labour has been added when not authorized, it has been remitted, and also where some cumulative punishments have been imposed for the same act or offence.

The following statistics, collected from official information and the published "Judicial Statistics,"⁴⁸ in connection with the administration of the game laws in England, may not be out of place.

The number of licences "to kill game" taken out since the 23 & 24 Vict. c. 90, was as follows:—

1860-61, at £2..	34,788	—at £2..	9,601.	Total	44,389.	
1861-62	"	39,437	"	9,645.	"	49,082.
1862-63	"	35,036	"	10,439.	"	45,475.

⁴⁷ *Reg. v. Inhabitants of Thurlstone*, 1 E. & B. 502; 28 L. J. (N. S.), Q. B. 188; 32 Law T., N. S. 275; 23 J. P. 565; Arch. Poor L. 210; *Reg. v. Williams*, 18 J. P. 502. In Scotland it has been decided that the tenants of shootings are liable to the poor's assessment. (Irvine on Scotch Game Laws, 2nd edit. 38).

Statistics as
to game li-
cences and
game laws.

The number of licences "to deal in game" taken out during the same period, was :—

1860—61.	1861—62.	1862—63.
1,464.	1,691.	1,655.

The number of persons committed for trial during the last five years, for being out armed, taking game, and assaulting gamekeepers, was in each year as follows :—

1858.	1859.	1860.	1861.	1862.
106	132	87	111	103

of whom there were convicted :—

78	102	58	88	91

As regards persons summarily convicted for offences against the game laws, there were, in each of the five years, the following for these offences :—

	1858.	1859.	1860.	1861.	1862.
Trespassing by day ..	7,154	7,175	7,564	7,629	9,144
Night poaching and } destroying game }	1,737	960	1,053	823	888
Illegally selling or } buying game }	38	53	37	31	52
Under "Poaching Prevention Act" }	..	..	..	..	17 for 3 mos.
Total in each year ..	8,929	8,188	8,654	8,483	10,101

Resolutions
of Committee
on the Game
Laws in 1846.

As some change or further inquiry into the operation of the game laws may be again demanded,⁴⁸ it seems a fit place to insert here the Report or Reso-

⁴⁸ The House of Commons on 17th March, 1863, decided by a majority of 19 (176 against 157), that it is not desirable to appoint a committee to inquire into the Game Laws until further experience has been had of the operation of the Prevention of Poaching Act, 25 & 26 Vict. c. 114 (Chap. XVI.).

lutions arrived at by the last Committee of the House of Commons, in July, 1846; which Committee, after a full and searching inquiry,—every view of the subject being then raised and discussed,—contrary to usual custom, reported in a different sense to that desired by Mr. Bright,⁴⁹ upon whose motion the Committee was granted. The Resolutions, which are dated 6th July, 1846, and to which we have added side-notes and foot-notes of references to subsequent legislation upon certain matters, are as follows :—

1. That it is the opinion of this Committee, that the common law of England has always distinctly recognized a qualified right of property in game, and that from a very early period it has been found necessary, by statutory enactment, to make some special provision against the attempt to steal or destroy a species of property peculiarly exposed to depredation.⁵⁰
2. That it is the opinion of this Committee, that the stringency of the Game Laws has been from time to time materially qualified and relaxed.
3. That it is the opinion of this Committee, that the recent Act, 1 & 2 Will. 4, c. 32, vested the property in game in the occupier of the soil,⁵¹ and distinctly recognized in game, as the subject of sale, one of the essential qualities of private property.⁵²
4. That, under these circumstances, the tenant has at all times the power to secure the game to himself, or to reject the tenancy, if the proprietor of the lands insists on a reservation being made of the game in his (the proprietor's) favour.
5. That it is the opinion of this Committee, that to exclude game from the protection of the law would be inconsistent with a due regard to the security of other property.

⁴⁹ The elaborate report proposed by Mr. Bright, but rejected by the Committee, is printed with the evidence in the Parliamentary Blue Book, 1846.

⁵⁰ See Chap. I., as to property in game and other wild birds, &c.

⁵¹ See Chap. VI., on landlord and tenant's rights, &c.

⁵² See Chap. X., as to the licences to deal in game.

Introduction.

- Taking game by strangers, penal.
- Alterations in law may be made.
- Cumulative penalties.
- Pursuing game, and committing violence.
- Revenue penalty excessive.
- Time for appealing against conviction.
- Informer's share of penalties.
6. That it is the opinion of this Committee, that the taking of game, by persons who have no right of property in it, should continue to be the subject of penal legislation.
 7. That, in reviewing the statutes now in force with reference to the pursuit and sale of game, it appears to your Committee that alterations may be suggested which, without impairing their efficiency for the repression of crime, would prevent the unequal or excessive punishment of persons who violate their provisions.
 8. That it is expedient to abolish cumulative penalties for poaching.^{ss}
 9. That your Committee are not, however, prepared to recommend such an alteration of the law as would exempt from more severe penalties those who, in the illegal pursuit of game, commit at the same time a breach of the revenue laws, or those who, in the day time, being armed and in numbers, are guilty of violence.
 10. That it is the opinion of this Committee, that the penalty imposed by the statute 52 Geo. 3, c. 93, for sporting without a certificate, appears excessive.^{ss}
 11. That it is the opinion of this Committee, that the space of three days, allowed by section 44 of 1 & 2 Will. 4, c. 32, for giving notice of appeal against any summary conviction under this act, should be extended.^{ss}
 12. That it is the opinion of this Committee, that it is expedient that so much of the 5 & 6 Will. 4, c. 20, which allows a moiety of the penalty levied under the 1 & 2 Will. 4, c. 32, to go to the informer, should be repealed.

^{ss} See *ante*, p. 14, as to these cumulative penalties, which still exist.

^{ss} By the 52 Geo. 3, c. 93, sched. L., rule 12, and 6 & 7 Will. 4, c. 65, s. 8, the penalty was 20*l.* and the double duty 7*l. 7s.*; but now by 23 & 24 Vict. c. 90, s. 4, it is but the 20*l.*, and the district commissioners of taxes cannot enforce it, nor any justice without the excise officer's information. See Chap. V.

^{ss} See Chap. XIII. There is in England and Ireland an appeal to a Superior Court in every case, when the decision of the magistrates appears to the dissatisfied party to be erroneous in point of law (20 & 21 Vict. c. 43).

13. That it is the opinion of this Committee, that no person convicted of night poaching under s. 1, for night poaching. 9 Geo. 4, c. 69, whose offence is unattended by circumstances of aggravation, should be subjected to the punishment of transportation.⁵⁶
14. That it is the opinion of this Committee, that no person convicted of night poaching, under the first section 9 Geo. 4, c. 69, should be required to find sureties for not repeating such offence. Id.
15. That it is the opinion of this Committee, that, apart from considerations of revenue, every owner or occupier of land, having the right to kill the game on that land, should have such right without being required to take out a game certificate. Owner or occupier should have absolute right to take game.
16. That your Committee further recommend the abolition of certificates as regards the pursuit and destruction of hares by means of packs of hounds, or by greyhounds; and also to recommend the reduction of the duties on greyhounds to those imposed on common dogs.⁵⁷ Abolition of licences for hares; duty on dogs.
17. That your Committee regret to find that great facilities still exist for the disposal of stolen game. Sale of stolen game.
18. That it has been suggested to your Committee, that by imposing additional legislative restrictions upon the sale of game, such facilities might be diminished, if not altogether removed; but the practical difficulty of enforcing any such regulations appears to your Committee to be almost insurmountable, and the regulations themselves would necessarily be of so stringent and vexatious a character that your Committee cannot recommend their adoption. Id.
19. That it is the opinion of this Committee, that the powers of constables should be better defined and enlarged in regard to the search and detention of persons found, under suspicious circumstances, with game in their possession; and that power should be given to constables to search public houses and Constables' powers should be enlarged to the seizure of game.

⁵⁶ Now penal servitude by 20 & 21 Vict. c. 3, s. 2, Chap. XIII.

⁵⁷ This recommendation as to hares and hunting has been adopted by the legislature; as to England by the 11 & 12 Vict. c. 29, Chap. VI., and as to Scotland by the 11 & 12 Vict. c. 30, Chap. XVIII., Sect. 3. As to the duty on dogs, there is now one uniform rate for all description of dogs by 16 & 17 Vict. c. 90.

Introduction.

- Sale of game at commencement of sporting season.
- Damage to crops.
- Compensation to occupier.
- Id.*
- Id.*
- Id.*
- Id.*
20. That it is the opinion of this Committee, that the present time fixed for the period at which feathered game becomes a marketable article, and saleable by the dealer, should be postponed; and they recommend that the sale of each species of game should be deferred until one day after the season for shooting it has commenced.
21. That your Committee has received evidence to show that the preservation of large quantities of game has been the frequent cause of damage to the neighbouring crops.
22. That it is the opinion of this Committee, that in cases where the damage done to the growing crops of the occupier is caused by game, belonging to, or reserved by, the owner of the land, such damage may be made the subject of pecuniary compensation.
23. That it is the opinion of this Committee, that, although instances to the contrary have been proved to your Committee, evidence has been adduced before them which warrants the conclusion that, in general, a tenant's just claim for compensation is complied with by his landlord.
24. That it is the opinion of this Committee, that great difficulty must always exist in determining the amount of damage which has been inflicted by game on growing crops, and that the estimate of such damage, however skilfully made, is rarely satisfactory to both parties.
25. That it is the opinion of this Committee, that where, from the vicinity of the preserves of adjoining proprietors, such damage must be attributed to the game bred and preserved therein, the reparation for

⁴⁸ The power to constables to search suspected persons with game is now given by 25 & 26 Vict. c. 114, s. 2, Chap. XVI.; but the last recommendation is not yet the law. See Chap. I., on property in game. In Ireland the possession of game unlawfully, by higgler, tavern-keepers and others is an offence, and power is given to justices to grant search warrants for game (27 Geo. 3, c. 35, ss. 6, 9, Chap. XIX., Sect. 9), and so in Scotland (13 Geo. 3, c. 54, s. 3, Chap. XVIII., Sect. 7.)

such damage cannot generally be made the subject of previous agreement.

26. That it is the opinion of this Committee, that, under No action on these circumstances, cases of hardship may be expected to recur; but the extreme difficulty of establishing the liability of any particular party for the damage done, or correctly assessing the amount of such damage, have induced your Committee to reject the suggestion, that an action on the case would be a fitting or practical remedy for damage done to growing crops by game.
27. That it is the opinion of this Committee, that this Damage principle species of damage is to be attributed mainly, if not entirely, to hares and rabbits, and that no appreciable proportion of such damage can be ascribed to feathered game.⁵⁹
28. That it is the opinion of this Committee, that the law Scotch law as in Scotland, with regard to game, differs from that in England in many essential particulars, and but little evidence respecting that part of the subject has been adduced before your Committee.⁶⁰

If it should be decided to amend the Game Laws, I would throw out the following suggestions for a consolidation Bill, for rectifying their present complicated provisions⁶¹ :—

1. Enact one comprehensive law for the whole kingdom.
2. Declare game, rabbits, woodcocks, snipes, quails, landrails, wild ducks, teal, and widgeons, when

⁵⁹ As to hares, the occupier who has the right to the game may kill them without the government licence in England and Scotland (11 & 12 Vict. c. 29, 30); and so he may the rabbits (23 & 24 Vict. c. 90, s. 5). See Chaps. V. and VI. In Ireland *any* person may kill rabbits without obtaining a game certificate (23 & 24 Vict. c. 113, s. 48).

⁶⁰ See Chap. XVIII., as to Game Laws of Scotland, and Chap. XIX. as to Ireland. Since, however, this report was made the 23 & 24 Vict. c. 90, s. 13, has imported into Scotland and Ireland the English definition of "game" and the close time for certain purposes, as well as the provisions in the English acts as to dealing in game. See Chap. X.

⁶¹ Mr. Paull, M.P., proposed, in session 1863, to bring in a Bill to amend the Game Laws, declaring game and other birds and animals to be the property of the owner or occupier of the land where found, or of the person authorized by the

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upon the
Game Laws.

feræ naturæ, to be, for all purposes, the property of the occupier of the land (of whatever tenure it may be) in, over or upon which it shall, for the time being, be found, killed, taken, or pursued, except where it is now reserved to the landlord, and in that case declare it such landlord's: on wastes of manors to be the lord's.

3. Allow the person entitled to the game, &c., to take it, or authorize another to do so, whenever he pleases, subject to the revenue laws.
4. Abolish all *property* qualifications to kill game, and the special right of property in game in respect to privileged places, such as warrens, chases, and forests (except royal forests).
5. Enact that the taking or killing, wounding or receiving game, &c., by unauthorized persons, in or out of season, be punishable either as the taking, &c., of deer in enclosed or unenclosed places is now punishable;⁶² or as simple larceny,⁶³ and provide a lesser punishment for taking or destroying eggs.
6. Re-enact the present sections as to appointment of gamekeepers,—trespass in search of game, &c., without the occupier's leave,—the punishment for night poaching (excepting the sureties),—the laying of poison to kill game,—and the dealing in game by persons not entitled to kill it.
7. Allow no cumulative penalties for the same act or offence, except as against the revenue laws, which are to remain.

owner or occupier to kill and take it;—that to wound or steal it should be punishable as for simple larceny, and to receive it knowing it was stolen as receivers of stolen goods are punishable;—allowing the present Game Laws to remain; but providing that parties should not be liable to be proceeded against under them and the proposed new enactments. The bill (the draft of which Mr. Paull kindly favoured the writer with a perusal) is carefully prepared, but was not introduced, because the operation of the Poaching Prevention Act of the previous session seemed to render further legislation inexpedient. See note 48, *ante*, p. 18.

⁶² 24 & 25 Vict. c. 96, ss. 12—16, Chap. XIV.

⁶³ 24 & 25 Vict. c. 96, s. 4, and apply other sections, 7, 9, &c. as to larceny to the offence; also s. 3 of the 18 & 19 Vict. c. 126, which allows the offence of larceny to be dealt with in petty sessions on a plea of guilty, might be advisable.

8. Provide a summary punishment for trespass on land in search of, or taking without the occupier's leave, other birds than game, &c.,⁶⁴ mentioned in the second suggestion, p. 23.
9. Prohibit justices from interfering in Game Cases, where they are in any way interested in the game, or the land upon which the offence is committed,—where related to a person so interested,—and where the parties to the proceedings are the servants or tenants of either.⁶⁵

⁶⁴ It should be stated, in reference to this suggestion, that the present law does not furnish any remedy for the following acts in respect of these birds when *feræ naturæ* :—

Being on ground in search or pursuit of birds, which are not game, woodcocks, snipes, quails, or landrails, or of their eggs:

Killing or taking woodcocks, snipes, quails or landrails, or their eggs, although a trespass after the birds is punishable :

Killing or taking swans, wild ducks, teal or widgeons, although the taking of their eggs is punishable :

Taking or killing of any other birds than pigeons and game, and those protected by 24 & 25 Vict. c. 96, ss. 21, 23 ; 24 & 25 Vict. c. 97, s. 41 (Chap. XXIII.) :

Taking or destroying the eggs or nests of any other bird than game, swans, wild ducks, teal or widgeons :

Using a dog, gun, &c. for taking, &c., any other bird than a bird of game or rabbits.

A clause to meet all these cases was prepared by the writer in the hope that it might have been inserted in Mr. Paull's Poisoned Grain Prohibition Bill, now the 26 & 27 Vict. c. 113.

⁶⁵ See analogous enactments in the Alehouse, Truck, Factory and other Acts, epitomized in Oke's "Synopsis," 8th ed. pp. 25, 26.



CHAPTER I.

OF PROPERTY IN GAME, AND OTHER BIRDS AND ANIMALS, THROUGHOUT THE UNITED KINGDOM.

Ownership of THE right of property in, or the actual ownership game rests upon the common law. of, game,¹ and other wild and half-tamed animals, common law. rests upon the common law alone, and not upon the exceptional legislation called the "Game Laws;" and is distinct from the right to shoot or take it. The subject, however, is somewhat complicated and perplexing, but being ably treated of in many learned and elaborate works,² our observations must, to some extent, be confined to an epitome of previous writers, with sometimes their identical expressions and arrangement of the matter, to which we add the modern decisions and some practical remarks.

Not property until captured. As a general proposition, beasts and birds of game being included in the class of wild animals—the animals *feræ naturæ* of the civil or Roman law—are not, properly speaking, the property of anybody; they belong to nobody until they are caught; they are their own master, are free to come and go, and are incapable of identification, and so the characteristics of the right of property are absent. This rule is, however, subject to various qualifications; and, for the purpose of ascertaining ownership, all beasts and birds are divided into

¹ See the introductory observations at pp. 2, 3, 4, as to what animals and birds come under the denomination of "game" in each part of the United Kingdom.

² Woolrych, G. L. 43; Paterson, G. L. 16; Locke, G. L. iii.

wild and tame animals; and these, as regards the offence of larceny, are classed into those which are fit and those which are not fit for food. We will first treat of game in its wild state as most material.

The Committee of 1845-6 upon the "Game Laws" rightly said in their Report (first resolution, *ante*, p. 19), "That the common law of England has always distinctly recognized a qualified right of property in game, and that from a very early period it has been found necessary, by statutory enactment, to make some special provision against the attempt to *steal* or destroy a species of property peculiarly exposed to depredation." The common law of England treats game as property *sub modo*—as a special or secondary kind of property—and the statute law recognizes the possession of it, protects it from trespassers, licenses the killing of it and sometimes its sale, but neither treats it in its wild state as susceptible of larceny; and, indeed, if it were by an act declared for *all* purposes to be property, its essential character would not be thereby changed, and there would still be no means of identifying it except in very rare cases, unless some new test of proprietorship were provided.³

In support of a ground of action the common law recognizes four ways of acquiring property, more or less absolute, in these animals, viz.—(1) *ratione soli*, (2) *per industriam*, (3) *propter impotentiam*, and (4) *ratione privilegii*; or, in other words, (1) by reason of their being on the soil, (2) taming them or reducing them into possession, (3) by reason of their being reared on the soil, and (4) by right of free warren, &c.

The owners or occupiers of the soil have a quali- *Ratione soli.*

³ *Wilde*, B., in the recent case of *Blades v. Higgs, post*, p. 29, threw out the observation, that "if the legislature should now interfere by giving to the owner of the land property in game, either absolute or qualified, so long as it remained on his land, it would be a decision in the spirit of justice and policy of the common law." (27 J. P. 193, 194, 196).

Ratione soli. fied right of property in wild animals by reason of their being on the soil. They can only be taken by means of a trespass, and the law naturally prefers the title of the owner or occupier of the land to that of the trespasser, except where there are two competing owners of land, and the animal was started on the land of one and caught or killed on that of the other; and then the law seems to treat the claims of the landowners as extinguishing each other, and confers on the person who first captures it the *property* of the animal captured, whether he is a poacher or trespasser or not. This statement of the law was first laid down by Chief Justice *Holt*, and is alleged to be deduced by him from the Year Books.⁴ Thus:—“If A. starts a hare in the ground of B., and hunts it and kills it there, the property continues all the while in B. But if A. starts a hare in the ground of B. and hunts it into the ground of C., and kills it there, the property is in A., the hunter; but A. is liable to an action of trespass for hunting in the grounds of B. as of C. But if A. starts a hare, &c., in a forest or warren⁵ of B. and hunts it into the ground of C., and there kills it, the property remains all the while in B., the proprietor of the warren, because the privilege continues.” Then, if A. starts a hare in his own close, and hunts it into the close of B., and kills it there, the original property remains in A., and the coursing is a continuance of that property.⁶ In fact, the creature is the property of the lord of the soil whilst it remains there, but (except in the case of free warren) the property goes with the hunter as soon as he drives it off the land where he started it. This doctrine as to the hare (and the same rule is

⁴ *Sutton v. Moody*, 1 Ld. Raym. 250; *Holt's Cas.* 18; 2 Salk. 556; 7 Taunt. 511; *Paterson, G. L.* 17.

⁵ See Chap. II. what is a forest or free warren, and what are birds and beasts of warren.

⁶ 11 Mod. 75, by *Powell, J., Woolrych, G. L.* 46, 47; *Holt's Ca.* 16, 19.

equally applicable to all wild animals) was acted *Ratione soli*. on in *Churchward v. Studdy*,⁷ where it was held that the hunter could sue the owner of the land on which the game had been killed but not started, for recovery of the game. It was also assumed and acted on in the *Earl of Lonsdale v. Rigg*,⁸ and the question was again raised and reargued in February, 1863, before the Exchequer Chamber, in the case of *Blades v. Higgs*,⁹ on appeal from the Common Pleas, and affirming the decision of that court. The facts in the last case were these: the plaintiff, a licensed dealer in game, brought an action against the defendant, a servant of the Marquis of Exeter, for taking out of his possession ninety dead rabbits, which the plaintiff had received from persons who had netted them on the marquis's land the previous night, having trespassed there for that purpose; and the court held that the servants were justified in treating the rabbits as the property of their master, and in taking them from the plaintiff; in fact, deciding that rabbits started *and* killed or caught on the land of another, other than the captor, are the property of the person on whose land they are killed or caught, and not of the captor, and may legally be retaken. As a necessary consequence, an action of trover will lie for game or rabbits killed or taken by a trespasser, at the suit of the owner of the land on which they were taken, as before held in *Earl of Lonsdale v. Rigg*. The result may be also said to be, that, *prima facie*, the hunter, though trespassing, acquires the property of what he catches; but if the game was started *and* caught on one person's land, it belongs to that person, as it is called, *ratione soli*;

⁷ 14 East, 249; 7 Taunt. 502.

⁸ 1 H. & N. 923, in error; 26 L. J. (N. S.), Exch. 196; 28 Law T. 372; 21 J. P. 228.

⁹ 32 L. J. (N. S.), C. P. 182; 7 Law T., N. S. 798, 834; 27 J. P. 193, 194, 196; S. C., in Com. Pl. 31 L. J. (N. S.), C. P. 151; 5 Law T. (N. S.), 752; 25 J. P. 743.

Ratione soli. or if it was hunted by a trespasser out of a warren, or hunted into a warren, it belongs to the owner of the warren, *ratione privilegii*.¹⁰ It should be stated here, that the lord of a manor has no peculiar right to the game superior to that of any other landowner within the manor, as has been erroneously supposed, originating, probably, from the power given him to appoint a gamekeeper; but his property in the game upon the wastes of the manor is confirmed by the 1 & 2 Will. IV. c. 32, s. 10.¹¹ The question whether it amounts to the crime of larceny to take game will be considered after we have disposed of the three remaining modes of acquiring property in game.

Per industria-

triam. When a person tames a wild animal or reduces it into his possession, the property thereof vests in him, for the purpose of an action of trespass only, and so remains until it escape again into its original state of freedom. He does not acquire so absolute a property in it, even when tamed, as to make it larceny in another person to feloniously take and keep it; for it is only where the animal so tamed is fit for food that the taking of it becomes larceny, as in the case of tame game, pheasants in a mew, deer in a park, rabbits, or pigeons, and their eggs, which we shall hereafter consider. The statute law of England and Ireland has, however, provided for the punishment of persons hunting deer, taking or killing hares and conies in warrens and pigeons, and the stealing of birds and animals which are not fit for food.¹² This title to wild animals must, it will be seen, yield to the titles *ratione soli* and *ratione privilegii*.

¹⁰ Manwood, 389; Paterson, G. L. 18.

¹¹ Locke, G. L. xxxvii.; Paterson, G. L. 21, citing dictum of Martin, B., in *Bruce v. Helliwell*, 5 H. & N. 609. See further Chap. II., "Manor," and Chap. VI.

¹² 24 & 25 Vict. c. 96, ss. 21, 22 (birds and animals), and ss. 18 to 29 (dogs); ss. 12 to 16 (deer); s. 17, hares (and conies in warrens); s. 23 (pigeons); Chapters XIV., XV., XXII., XXIII.

The owner, or, if let, the occupier of the soil, has, *Propter im-potentiam.* by virtue of his ownership or occupation of the surface, a qualified or transient property in the young of all wild animals reared on the soil. Such as the young of game, rabbits, and birds (whether fit for food or not), until they can fly or run away, and then that property ceases.¹³ If birds of game are taken or destroyed before they attain maturity, or out of season, it is made an offence punishable summarily under the Game Laws, or if other birds or wild animals are taken it is a ground of action for a trespass and not a felony as once held.¹⁴ With respect to the eggs of any such birds, it is no offence for a trespasser to take them, but in the case of the eggs of game, swans, wild duck, teal and widgeon, they belong to the person entitled to the game, and a summary punishment is provided by the Game Act for taking or destroying them in the nest;¹⁵ and as to the eggs of other birds, it is actionable to take them as the birds themselves.

There are several franchises or privileges which also interrupt and qualify the common law right of taking game in one's own lands, and these may be said to be attached to particular localities. These rights are called rights of forest, free chase, park, and free warren (treated of in Chapter II.), all of which represent the highest kinds of property in game known to the law, inasmuch as the owner of the forest, park or warren is considered to have property in the animals, even when the soil on which the animals are found is vested in another person, and when they are *driven out* of the forest by a tre-

¹³ *Case of the Swans*, 7 Rep. 17; 2 Bla. Comm. 394; Pater-
son, G. L. 17; Locke, G. L. v.; Bell, G. L. 15.

¹⁴ 2 Bla. Comm. 394; 1 Hale, 511; 2 East's P. C. 607; 3
Burn's Jus. 213.

¹⁵ 1 & 2 Will. 4, c. 32, s. 24, Chap. VII. The Poaching Prevention Act, 25 & 26 Vict. c. 114, Chap. XVI., extends also to the eggs of pheasants, partridges, grouse, black or moor game.

passer.¹⁶ Beasts of warren (which includes hares, conies and roes, partridges, rails and quails, wood-cocks and pheasants, mallards and herons, but not grouse), however, *when out* of the warren, may be hunted and caught like any other game, and become the property of the person catching them.¹⁷ A manor is not in this way privileged as to game and other animals beyond ordinary lands.

Whether
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The next and more important question at the present day is, whether game *feræ naturæ* is “property,” or rather the absolute goods and chattels of, any particular person for the purpose of larceny, i.e. of charging another with feloniously stealing it. At p. 27, note ³, attention is directed to an observation thrown out by Mr. Baron Wilde, in a recent case; but, if game should be declared to vest in any person as property, the difficulty would lie in its nature, as a wild animal wants the essential characteristics of property, the power to catch it at will, and of exclusive possession, and the impossibility of identifying and tracing it. Indeed, it may be said at the outset, that if a well known principle of law is to be applied, which is at present applicable to the eggs of game, viz., that where a less punishment is prescribed by statute, or, in other words, where express mention is made of proceeding by summary conviction, as there is under the exceptional legislation called the Game Laws, for the *taking* of game, it is not an offence at common law to take or steal game, and the proceeding by indictment is excluded;¹⁸ the *variety* of the enactments in these

¹⁶ Manwood, 389; cases cited Locke, G. L. xxx. xxxi.; Woolrych, G. L. 44.

¹⁷ Woolrych, G. L. 25; Locke, G. L. xxx.; Paterson, G. L. 18.

¹⁸ 2 East's P. C. 607; Levinge's G. L. 145, n. Of course also it could not be punishable summarily as simple larceny under the Juvenile Offenders' Acts by persons under sixteen (10 & 11 Vict. c. 82; 13 & 14 Vict. c. 37), or under the Criminal Justice Act, 18 & 19 Vict. c. 126; Oke's "Synopsis," 8th edit. p. 661, as to England; or Juvenile Offenders in Ireland, 14 & 15 Vict. c. 92, s. 6.

laws for protecting game, furnishing also an additional argument that the taking of it in its wild state is not, and apparently never was intended to be, larceny whilst those enactments remain on the statute book; for if it be larceny, then the Game Laws must be treated as a dead letter. In one of the recent cases, *Blades v. Higgs*, it was suggested by counsel that the doctrine that game belonged to the person on whose land it was started and killed (see *ante*, p. 29) led to the conclusion that it must be larceny in a poacher to take it; but the judges, in the course of the argument, said (without giving the reasons) that that consequence did not follow, probably because in order to constitute larceny the property must have previously belonged to some individual who had an absolute and not a qualified property in it (for if the game passed into the neighbour's ground the property vanished, and became the captor's although obtained by trespass); whereas game did not belong to anybody until it was actually caught, and thus there was no room for the guilty animus which is essential to make out a criminal offence.¹⁹ Another view also presents itself, probably also in the minds of the learned judges. It is established by many early decisions that a trespasser killing an animal *feræ naturæ*, and carrying it away, is *not* guilty of larceny.²⁰ This rule appears to apply only when the taking and the carrying it away are one and the same or a continuous transaction, (for then the statute Game Laws apply,²¹ as also when the game is taken alive and

¹⁹ See article, 27 J. P. 193, 194.

²⁰ Hale's P. C. 510; 7 Coke, R. 156; 2 Russ. on Cr. 84; 4 Bl. Com. 266.

²¹ See *Osbond v. Meadows*, 32 L. J. (N. S.) M. C. 238; 6 Law T., N. S. 290; 26 J. P. 439; wherein it was held, that a person who, in his own land, shoots a pheasant in the land of another, and goes on such land to pick the bird up, commits a trespass of entering land in pursuit of game within 1 & 2 Will. 4, c. 32, s. 80, the shooting and picking up the bird being one transaction. *Vide* observations of *Erle*, J., referred to in note ²², p. 34.

Whether
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stealing.

carried off the land alive,) as has been decided in the analogous case of detaching and converting metal fixed to the freehold, which was not punishable by the common law before it was made felony by statute, although if it was stolen at a different time than the severing it was;²² and therefore, it is submitted, to constitute the offence of larceny, the taking of the game must be at a different time, and after the killing of it either by the person who killed it or a stranger, until which event it is not the property of the landowner. When taken under the latter circumstances it ceases to be within the protection of the Game Laws, in the same way that pheasants tamed and under the control or care of a hen are not “game” within the acts.²³ If game can be said, in the words of legal authorities, to “savour of the freehold,” (the right to it being incident to the land,) or to be the “unsevered produce of the realty,” then also no larceny can be committed of it at common law, like the case of metal fixed to the freehold as we have seen, and ore

²² Roscoe, Cr. Evid. 5th edit. pp. 591, 609; *Lee v. Kidson*, 7 Tautn. 191. The Criminal Law Commissioners in their first Report, p. 11, say, upon this point, “Although a thing be part of the realty, or be any annexation to, or unsevered produce of the realty, yet if any person sever it from the realty with intent to steal it, *after an interval which so separates the acts of severance and removal that they cannot be considered as one continued act*, the thing taken is a chattel, the subject of theft, notwithstanding such previous connection with the realty. If any parcel of the realty, or any annexation to, or unsevered produce of, the realty be severed, otherwise than by one who afterwards removes the same, it is not the subject of theft, notwithstanding it be stolen instantly after that severance.” In *Osbond v. Meadows*, *supra*, note 21, *Erle*, J., said, in reference to the point whether the picking up constituted a separate act of trespass, “I beg to reserve for another time whether the entering the land for the purpose of picking up dead game, constituted a trespass within the statute.” No one suggested such an act was larceny. See also Arch. Cr. Pl. by Welsby, 15th edit., p. 274.

²³ *Reg. v. Garnham*, 8 Cox’s Cr. Cas. 451; 2 F. & F. 347.

from mines, or trees, fences, &c., now specially provided for by statute.

As the Game Laws appear to us to apply to the taking and killing of game when alive, and, therefore, that no larceny is committed by the carrying it away immediately on its being killed, it is not worth while to anticipate the effect of a judicial decision to the contrary, by naming the several points which would then have to be considered to complete that offence ; nor will, we apprehend, the being on land at night, with intent to steal game, be the statutable offences of being there with intent to commit a felony, or for an unlawful purpose, and, consequently, not punishable under either the English Larceny or Vagrant Acts.²⁴

The laws of Scotland and Ireland, like the law of England, treat wild game as not a subject of strict property, nor the subject of larceny or theft. In Scotland, however, there is no qualification of the right by reason of the ownership of the soil ; but the person who first catches or reduces into possession wild game is, at common law, entitled to the property in such game, whether it was started on the same lands on which it was caught or not, and whether it was caught or not through the medium of any number of trespasses on other people's land. Privileged places, such as forests, chases, and free warrens, are unknown ; and manors are not recognized. But reserved rights of hunting upon another's land are, in some respects, similar to England ; and forests anciently existed.²⁵

With regard to property in game (being fit for Game, dead food), when wholly or partially tamed, the rule is, that when it is tamed, dead, or reclaimed, or reduced into possession, it is, as against a wrong doer, the

²⁴ 24 & 25 Vict. c. 96, s. 58 ; Offence 257, Oke's "Synopsis," 8th edit., p. 832 ; 5 Geo. 4, c. 83, s. 4 ; Offences 23, 24, Oke's "Synopsis," p. 580.

²⁵ Paterson, G. L. 168, 169 ; Irvine on G. L. of Scotland, 19, 25 ; Barclay's Digest, 405 ; Levinge's Irish G. L. 17.

When fit for food.

property of him who has it, as before shown under the title "*Per Industriam*." Where, therefore, the game is *dead* when taken on the land by the person charged (he not being entitled thereto), and not killed at the same time as the taking away, the offence is simple larceny, punishable on indictment, or summarily,²⁶ in which the game may be described as "one dead pheasant, the goods and chattels of" the rightful owner or occupier; and so if such offender steal it, when dead, elsewhere. It is also larceny to steal *live* game, and, indeed, all wild animals fit for food, when reclaimed or confined, as in a mew or breeding-place, or under a hen,²⁷ or if it has been reduced into possession in other ways, whether the person from whom they are taken came lawfully by them or not, either by virtue of a licence to kill or sell, or by trespass; in which case the game would be described as "one tame pheasant," it not being necessary to describe it as alive, for the law presumes it to be so when not stated otherwise; but the recovery of the animal or damages for the trespass would be cause for a civil action by the rightful owner. The same rule applies to tame rabbits, and all domestic animals which serve for food, as swine, poultry, and the like, whether alive or dead, as well as to their skins or products, as eggs (except in the case of swans and wild fowl), milk, and wool. The action of trover for dead game we have alluded to in the case of *Earl of Lonsdale v. Rigg*, ante, p. 29. But if the animals, although reclaimed, are not fit for food, they are not capable of being stolen, and the taking is not a larceny.²⁸

When not fit for food.

²⁶ Under the Criminal Justice or Juvenile Offenders Acts, referred to in note ¹⁸.

²⁷ Roscoe's Evid. in Cr. Cas., 5th edit., p. 601; *Reg. v. Garnham, supra*, note ²³.

²⁸ First Rep. Crim. L. Comrs., p. 14, specifies, as among these, "bears, foxes, monkeys, apes, polecats, cats, ferrets, thrushes, singing birds in general, parrots and squirrels;" and probably others should be named which are kept for whim, profit or pleasure, as badgers, hawks, herons, falcons,

As to some of the wild animals, something more other wild can be said of the law as regards the recognition of ^{other wild} ^{animals.} property in them under certain circumstances, such as rooks, herons, hawks, pigeons, swans, wild duck, teal, widgeon, woodcocks, snipes, quails, and land-rail, and their eggs. Respecting rooks, which have ^{Rooks.} their liberty (except when too young to regain their liberty, and then they are the property of the occupier), it has been decided that an action does not lie for shooting them at the suit of the owner of the rookery, whether they are within or outside it, they not being protected by the common or statute law. ^{Hawks.} Herons and hawks seem much in the same position ^{Pigeons.} as rooks.²⁹ House doves and pigeons are protected both by the common and statute law: it is larceny at common law to take them when reclaimed and reduced into possession, as in a dove cote, or shut up in their boxes every night, and indeed also when tamed, although unconfined with free access at their pleasure to the open air;³⁰ and when in England or Ireland they are “unlawfully and wilfully” killed, wounded or taken under other circumstances than a larceny, (and, in fact, not being quite *feræ naturæ*, for then it would seem to be doubtful whether they are property, or within any law,) a summary punishment is provided by the 24 & 25 Vict. c. 96, s. 23.³¹ This section, however, has been recently held not to apply to a case where a party, under a claim of right, and after notice to

goats and rooks, dogs and horses, but the stealing or injuring of these is provided for by the statute law of England and Ireland (24 & 25 Vict. c. 96, ss. 18, 21; 24 & 25 Vict. c. 97, s. 41, Chaps. XXII. and XXIII.). Some of those are presently specially spoken of. The stealing, &c. of horses is punishable on indictment.

²⁹ Paterson, G. L. 24, 25; Woolrych, G. L. 10; *Hannam v. Mockett*, 2 B. & C. 934.

³⁰ *Reg. v. Cheaffor*, 2 Den. C. C. 361; 21 L.J. (N.S.), M.C. 43; 15 J. P. 801.

³¹ 24 & 25 Vict. c. 96, s. 23, Chap. XXIII. As to Scotland, see Irvine's G. L. 17—19.

the owner, that he would do so, kills a pigeon belonging to a neighbour which is doing mischief upon his own land; but it was admitted in argument, that he might, if he could, have taken it *damage feasant*,³² and, probably, an action would lie for the killing. As to swans, the principle seems to be, that when the swan is reduced lawfully into the possession of a private person, whether it be marked or not, he may be said to have a property in it for the purpose of an indictment at common law for larceny as otherwise; but that if the bird be at liberty in the sea or a navigable river, *prima facie* it belongs to the Crown; and it requires a royal grant or prescription to have a swan mark.³³ It is not larceny, however, to take the eggs of swans, as the English law has assigned a less punishment for that offence by the Game Act, 1 & 2 Will. 4, c. 32,³⁴ but there is no statutory protection to the birds themselves.

Wild fowl.

As to wild fowl, the owner of the decoy has no property in them, but an action is maintainable, at the suit of the owner of the decoy, if a person, in order to scare away the fowl, and in the exercise of no reasonable right of his own, wilfully shoots on his own land even, because such an act is within the rule laid down, that no man is to be injured in his trade.³⁵ Certain wild fowl—woodcocks, snipes, quails, and landrails—are protected by the trespass clauses, sects. 30, 31, 32, of the Game Act, and so are the eggs and nests of wild ducks, teal, and widgeons, like those of swans, but not of woodcocks, snipes, quails, and landrails.³⁶

Woodcocks,
&c.

³² *Taylor v. Newman*, 8 Law T. (N. S.) 424; 27 J. P. 502; and see 27 J. P. 386.

³³ *Case of the Swans*, 7 Rep. 17; 4 Inst. 280; Woolrych, G. L. 20; Paterson, G. L. 25; Arch. Cr. Pl. by Welsby, 15th edit., p. 274.

³⁴ S. 24, Chap. IX.

³⁵ *Keeble v. Hickeringill*, 11 East, 574; Woolrych, G. L. 11.

³⁶ Chaps. VII. and IX. The Poaching Prevention Act, 25 & 26 Vict. c. 114, Chap. XVI., extends to woodcocks and

The property recognized in the occupier in wood-cocks, snipes, quails, and landrails, as well as rabbits and hares, has been altered by the Game Laws, and is more particularly treated of in Chap. VI., the tenant, unless the right is expressly taken away from him in the lease, being entitled to them, like other wild animals, in right of his occupation. There is, to some extent, a recognized property in certain other animals, birds, or beasts, which are not fit for food, but which are reclaimed, and ordinarily kept in a state of confinement or for a domestic purpose, because the statute law has imposed penalties upon persons stealing or injuring them, and the value or amount of injury done is made payable to the party aggrieved; and, if not destroyed, justices may restore the birds, &c. to the owner.³⁷

wild animals
kept for
taking plea-
sure, &c.

At common law deer belongs to the tenant, but Deer. may, of course, be excepted, like game, by the lessor or landlord; and in that case they would belong to the latter. The property in deer passes in general to the heir, and when tamed and in a park it is personal estate.³⁸ The stealing of deer in a park is punishable as a larceny at common law, a qualified property, *per industriam*, subsisting in them by their being reclaimed; but in England and Ireland, to hunt, snare, carry away, or wound deer in the uninclosed part of a forest, &c., is punishable summarily by a penalty, and a second offence is a felony; so likewise it is a felony to do so in any inclosed ground; and persons having possession of venison or snares, or setting engines for taking deer in a forest, &c., or pulling down park fences, are also punishable summarily before

snipes throughout the kingdom; and see Chaps. XVIII. and XIX. as to Scotland and Ireland.

³⁷ 24 & 25 Vict. c. 96, ss. 21, 22; 24 & 25 Vict. c. 97, s. 41, Chaps. XXII. and XXIII.

³⁸ Co. Litt. 8; *Morgan v. Earl of Abergavenny*, 8 Com. B. Rep. 768, confirmed in *Ford v. Tynte*, 26 J. P. 228; 31 L.J. (N.S.) Chan. 177.

Hares and
conies in
breeding
grounds.

Suggestions.

justices, by the Larceny Act.³⁹ Hares and rabbits in grounds used for breeding them are specially protected in England and Ireland by the same act.⁴⁰

In the Introduction (pp. 23–25) I have offered some suggestions for a measure to consolidate and amend the game laws (if that should be desired), by declaring game as well as birds not now protected by any statute law to be the property of the occupier, and making the taking of them or their eggs an offence punishable either as a larceny or summarily, and abolishing cumulative penalties.

³⁹ 24 & 25 Vict. c. 96, ss. 12—16, Chap. XIV. In Scotland it is theft; and the 2 & 3 Will. 4, c. 68, s. 1, applies to trespasses after deer there.

⁴⁰ 24 & 25 Vict. c. 96, s. 17, Chap. XV.

CHAPTER II.

OF FREE WARRENS, FORESTS, MANORS, &c.; AND
THE PRIVILEGES, &c. OF THEIR OWNERS.

THE following epitome will give the legal description and title to the privileged places known in England and Ireland (for in Scotland, we have seen, *ante*, p. 35, they are not recognized) as free warren, forest, purlieu, chase, and park, as well as the principal powers and liabilities of their owners, as well as of manors and other localities—matters which are referred to in other parts of this work, but could not conveniently be placed in the notes.

The Game Act, 1 & 2 Will. 4, c. 32, s. 8, provides that it is not to prejudice the rights of any lord or owner of any forest, chase, or warren; nor do its provisions as to trespassers apply to any person *bona fide* claiming and exercising any right or reputed right of free warren (s. 35), nor does it affect her Majesty's forest rights, &c. (s. 9), nor the titles of lords of manors to game on the wastes (s. 10), who also have powers, besides these here stated, to appoint gamekeepers, grant deputations, &c. (ss. 13—16), Chap. IV.

A free warren is a place privileged by prescription or grant of the king for the preservation of the beasts and fowl of the warren, viz., hares, roes, conies, partridges, rails, quails, woodcocks, herons, and pheasants, but not grouse. A franchise of free warren is of great antiquity, and very singular in its nature. It gives a property in the wild animals

¹ See Woolrych, G. L. 25—42; Paterson, G. L. 20.

Provisions of
1 & 2 Will. 4,
c. 32.

Free war-
rens.¹

and beasts of forests and chase, by the king's grant or prescription. Three things are necessary to a park: a grant from the crown, inclosure by pale, wall, or hedge, and beasts of park, which are buck, doe, fox, marten and roe. A park cannot be erected without the king's grant; and it is usually enjoyed over other persons' lands, the owner having the exclusive right to hunt and pursue the beasts there. One of its advantages, which also belongs to a forest and chase, is that the owner or keeper can shoot any dog chasing deer in it, which is not competent to ordinary owners of game preserves.¹³

Manor.

Manors were formerly called baronies, as they still are lordships; and each lord or baron was empowered to hold a domestic court, called the court baron, for redressing misdemeanors and nuisances within the manor, and for settling disputes of property among the tenants. This court is an inseparable ingredient of every manor; and if the number of suitors should so fail as not to leave sufficient to make a jury or homage, *i.e.*, two tenants at the least, the manor itself is lost. A "reputed" manor is one which has ceased to be a legal manor, by defect of tenants or suitors to the court, and exists only by reputation.¹⁴ A lord of a manor is entitled to seize by his gamekeeper, &c., dogs, nets, &c., used therein by unauthorized persons (see 1 & 2 Will. 4, c. 32, s. 13, p. 50), to apprehend night poachers (Chap. XIII.), and to demand to see the licences of trespassers on the manor (23 & 24 Vict. c. 90, s. 10, Chap. V.), but he has not as such any peculiar right to the game (except he also have a grant of free warren) superior to that of any other landowner within the manor; and he may be sued in an action at law only, as a trespasser for entering either to hunt or preserve the game on lands not in his own occupation, including lands of the copyhold

¹³ Paterson, 19; Locke, xxv., xxiv.; Co. Litt. 233; 2 Inst. 199.

¹⁴ Levinge, Ir. G. L. 14, 15; 2 Bla. Com. 90.

tenants of his manor. But the wastes of the manor are *prima facie* vested in him, and the game thereon is his exclusively, and he may authorize others to kill it; and he has also his remedy by action at common law, or by summary proceedings before justices, against trespassers there.¹⁵

There are no other localities than these named privileged as to game or other wild animals; and none attaches to hares and rabbit warrens, nor open or inclosed places, popularly called preserves; nor rookeries; but as regards decoys legally established, being formerly considered a means of carrying on a trade, they are so far protected that an action has been held to lie by its owner against one who shoots or otherwise frightens away the wild fowl, for this comes within the rule that no man is to be wilfully injured in his trade.¹⁶

Other lo-
calities sup-
posed to be
privileged.

¹⁵ Locke, G. L. xxxiv. to xxxix.; *Cornwell v. Sanders*, 32 L. J. (N. S.), M. C. 6; 7 Law T., N. S. 356; 27 J. P. 148; 26 J. P. 770. As to rights over commons and inclosures, see Chap. VI.

¹⁶ Paterson, G. L. 23, 24; Locke, xxxix., xl.; Levinge, Ir. G. L. 21, 22. See *ante*, p. 38.

CHAPTER III.

THE SEASONS AND TIMES OF SPORTING IN
ENGLAND.

1 & 2 Will. 4, c. 32. THE season during which game may lawfully be taken in England¹ follows from the provisions of the 3rd section of the 1 & 2 Will. 4, c. 32, prohibiting the taking of any game on a Sunday or Christmas-day, and the taking of certain *birds* of game between certain periods of the year, known as the breeding season, leaving the remaining periods open to sporting. Except on a Sunday or Christmas-day, hares may be taken throughout the year, and it is no specific and distinct offence to take heath or moor game, or a woodcock, snipe, quail, landrail, or coney, or a swan, wild duck, teal or widgeon, on those days or at any time, no season being prescribed for them.

Definition of "game." By 1 & 2 Will. 4, c. 32, s. 2, (*inter alia*.) “The word ‘game’ shall, for all the purposes of this act, be deemed to include hares, pheasants, partridges, grouse, heath or moor game, black game and bustards.”²

Sect. 2. Sect. 3 enacts,—“That if any person whatsoever shall kill or take any game, or use any dog, gun, net or other engine or instrument for the purpose of killing or taking any game, on a Sunday or Christ-

Game not to be killed on Sunday or Christmas-day.
Sect. 3 (in part).

¹ The prohibited seasons in Scotland and Ireland are referred to in the Introduction, *ante*, p. 9.

² In the Introduction, at pp. 2, 3, 4, reference is made to other definitions of “game” in other acts treated of in this work.

mas-day, such person shall, on conviction thereof ^{1 & 2 Will. 4,}
before two justices of the peace, forfeit and pay for ^{c. 32.}
every such offence such sum of money not exceeding
five pounds, as to the said justices shall seem
meet, together with the costs of the conviction ;³

“ And if any person whatsoever shall kill or take³ Or birds of game within certain dates.
any partridge between⁴ the first day of February
and the first day of September in any year,—or any Partridge.
pheasant between the first day of February and the Pheasant.
first day of October in any year,—or any black game Black game.
(except in the county of Somerset or Devon, or in
the New Forest in the county of Southampton) be-
tween the tenth day of December in any year and
the twentieth day of August in the succeeding year,
or in the county of Somerset or Devon, or in the
New Forest aforesaid, between the tenth day of
December in any year and the first day of Septem-
ber in the succeeding year,—or any grouse, com- Grouse.
monly called red game, between the tenth day of
December in any year and the twelfth day of August
in the succeeding year,—or any bustard between Bustard.
the first day of March and the first day of Septem-
ber in any year,—every such person shall, on con-
viction of any such offence before two justices of
the peace, forfeit and pay, for every head of game
so killed or taken, such sum of money, not exceed-

³ I. e., when the birds here named are *feræ naturæ*, and whether killed or taken by means of a dog, gun, &c. or not. When they are dead the taking is an offence at common law; for which see *ante*, p. 36. *Vide* Chap. XII., *post*, for the mode of recovery of all penalties under the 1 & 2 Will. 4, c. 32, and p. 48, Form No. 1, mode of describing offence; and Chap. VIII., *post*, note ², for cases and observations under s. 23, as to the amount of penalty when several offenders commit the offence at the same time.

⁴ The words are, it is observable, “between” such a day and such a day, not “on or between,” and therefore the days themselves would seem to be excluded; as for example, the first day of partridge shooting is the 1st of September, and the last day the 1st of February following. A comparison of this section with the language of sect. 4 (Chaps. X. and XI.) will bear out this the popular construction of the act.

1 & 2 WILL. 4, c. 32. ing one pound, as to the said justices shall seem meet, together with the costs of the conviction.”⁵
[The remaining portion of this section, as to laying poison to kill game, is set out in Chapter IX., post.]

Firearms not to be used by night. The Killing Hares Act, 11 & 12 Vict. c. 29, s. 5 (Chap. VI.), prohibits any person from using any firearms or gun, by *night*, for the purpose of killing any game or hares.

Times for dealing in game. As to the times for dealing in game, see *post*, Chapter X., as to licensed dealers, and Chapter XI., as to other persons. Destroying eggs of birds of game, or of a swan, wild duck, teal, or widgeon, or taking these eggs out of a nest, see Chapter IX.



FORMS.⁶

1. Statement of offence of killing, &c. For that you [or he the said A. B.] on the —— day of ——, at the parish of —— in the said county, the same day being Sunday [or Christmas-day], unlawfully did kill [or take] certain game, to wit, —— [*in the case of a hare adding, to meet the provisions of 11 & 12 Vict. c. 29, otherwise than by coursing with a greyhound or by hunting with beagles or other hounds,*] contrary to the statute 1 & 2 Will. 4, c. 32, s. 3.

2. The like, using a dog, engine, &c. on Sunday, &c. For that you [or he the said A. B.] on &c., at &c., the same day being Sunday [or Christmas-day], unlawfully did use a certain dog, to wit, a ——, for the purpose of then and there taking
 [or a certain gun, or net, or engine, to wit, a snare, for the purpose of then and there killing]
 certain game, to wit, a ——, contrary, &c.

3. The like, birds of game out of season. For that you [or he the said A. B.] on &c., at &c., the same day being between the 1st of February last and the 1st

⁵ *Vide Chap. XII., post*, mode of recovery of penalty, and Forms Nos. 2, 3, *infra*.

⁶ These Forms of Statements of Offences are for insertion in the General Forms of Information, Summons, &c., given in Chapter XII., *post*.

day of September last or instant, being in the same year 1 & 2 Will. 4,
[or as the prohibited season may be in respect of the particular
bird], unlawfully did kill [or take] two partridges,
[or one pheasant],
[or two heads of black game, not being in the county
of Somerset or Devon, or in the New Forest, in
the county of Southampton],
[or three heads of grouse, commonly called red game],
[or two bustards],
there, contrary, &c.

D

CHAPTER IV.

GAMEKEEPERS; THEIR POWERS, DUTIES, AND
PROTECTION IN ENGLAND.

FOR the provisions as to the licences to gamekeepers, see 23 & 24 Vict. c. 90, ss. 2, 7, 8, 9, 18, *post*, pp. 60, 67, 68, 69.

1 & 2 Will. 4,
c. 32.

Lords of manors may appoint gamekeepers.

Sect. 13.

By 1 & 2 Will. 4, c. 32, s. 13, it is enacted,—“That it shall be lawful for any lord of a manor, lordship or royalty,¹ or reputed manor, lordship or royalty,—or any steward of the crown of any manor, lordship or royalty appertaining to his majesty,—by writing under hand and seal,—or in case of a body corporate, then under the seal of such body corporate,—to appoint one or more person or persons as a gamekeeper or gamekeepers to preserve or kill the game within the limits of such manor, lordship or royalty, or reputed manor, lordship or royalty, for the use of such lord or steward thereof²—and to authorize such gamekeeper or

Sect. 2.

10 Geo. 4,
c. 50, s. 14.

¹ What is a “manor,” see Chap. II., *ante*, p. 44. By 1 & 2 Will. 4, c. 32, s. 2 (*inter alia*), the words “lord of a manor, &c.” include a lady of the same. The term “royalty” does not include a wapentake or hundred, and therefore a lord thereof cannot as such appoint a gamekeeper (*Earl of Aylesbury v. Pattison*, 1 Doug. 28). The appointment of gamekeepers for her Majesty’s woods, &c., is regulated by 10 Geo. 4, c. 50, s. 14, who are not liable to the duty on licences to kill game (23 & 24 Vict. c. 90, s. 5, exemption 2, p. 65).

² The lord of a manor cannot delegate the power here conferred upon him, and he cannot convey the right of appointment without also conveying the manor itself (*Calcraft v. Gibbs*, 4 T. R. 681; 5 T. R. 19; *Blunt v. Grimes*, 4 T. R. 682, n.; 8 East, 179). In the absence of evidence to the

gamekeepers within the said limits to seize and take ^{1 & 2 Will. 4,}
^{c. 32.} for the use of such lord or steward, all such dogs,
nets, and other engines and instruments for the killing or taking of game as shall be used within
the said limits by any person not authorized to kill game for want of a game certificate,”—[now an excise “licence to kill game,” 23 & 24 Vict. c. 90, s. 6, Chapter V.³]

Powers of
gamekeepers
in manors.

contrary, it will be presumed that the game which the gamekeeper killed is for the use of the lord (*Spurrier v. Vale*, 10 East, 413; 1 Campb. 457); but he cannot use fire arms by night for that purpose (11 & 12 Vict. c. 29, s. 5, Chap. VI.).

³ The seizure is a ministerial act, and allowed to the gamekeeper alone, but it may be performed by a third person under the immediate direction of the gamekeeper, but not under a general direction (*Bird v. Dale*, 7 Taunt. 560; 1 Moore, 290). The dog, net or other engine (the word “gun” being omitted) must have been used at the time for the purpose of destroying game (*Rogers v. Carter*, 2 Wils. 378; Woolrych, G. L. 117, 178); but, unless in a free warren, the dog of a mere trespasser cannot be shot, except its destruction is absolutely necessary for the preservation of the game pursued (Id. 116, and see *Vere v. Lord Cawdor*, 11 East, 568; *Reg. v. Duke of Beaufort*, 2 Atk. 190). The lord cannot seize the gun of a gamekeeper of another lord, although he be upon his manor unlawfully (*Rogers v. Carter*, 2 Wils. 387). The dog, net or engine seized may, it appears, be destroyed, as upon seizure it becomes the property of the lord (*Kingsworth v. Bretton*, 5 Taunt. 416). A gamekeeper, acting under a deputation granted by a person having a colourable title as lord of the manor, is protected (*Hunt v. Andrews*, 3 B. & Ald. 341; Woolrych, G. L. 179); but as to other proofs, see *Calcraft v. Gibbs*, 4 T. R. 681; 5 T. R. 19; *Rushworth v. Craven*, M'Clel. & Y. 417; *Blunt v. Grimes*, 4 T. R. 682). It was doubtful whether a gamekeeper had the power to seize hounds (see *Grant v. Hulton*, 1 B. & Ald. 184); but under the present act all dogs are comprehended. If the gamekeeper has no right to kill the dog he would be liable either to an action in the County Court for the damage, or to a penalty under the Cruelty to Animals Act, 12 & 13 Vict. c. 92, s. 2, if he did it wantonly. 1 & 2 Will. 4, c. 32, s. 36, post, Chap. VII., gives a gamekeeper the right to seize game only, in the possession of persons found upon land by day or by night, and then only when “recently killed.” The 25 & 26 Vict. c. 114 (Chap. XVI.), gives no additional powers to gamekeepers.

1 & 2 WILL. 4, c. 32.
Lords of manors may grant deputations.

Sect. 14.

Person deputed not to be deemed servant of lord.

Sect. 14 enacts,—“That it shall be lawful for any lord of a manor, lordship or royalty, or reputed manor, lordship or royalty,—or any steward of the crown of any manor, lordship or royalty appertaining to his majesty,—to appoint and depute any person whatever, whether acting as a gamekeeper to any other person or not, or whether retained and paid for as the male servant of any other person or not, to be a gamekeeper for any such manor, lordship or royalty, or reputed manor, lordship or royalty, or for such division or district of such manor, lordship or royalty, as such lord or steward of the crown shall think fit,—and to authorize such person, as gamekeeper, to kill game within the same for his own use or for the use of any other person or persons who may be specified in such appointment or deputation,—and also to give to such person all such powers and authorities as may by virtue of this act be given to any gamekeeper of a manor;—and no person so appointed gamekeeper, and empowered to kill game for his own use or for the use of any other person so specified as aforesaid, and not killing any game for the use of the lord or steward of the crown of the manor, lordship or royalty, or reputed manor, lordship or royalty, for which such deputation or appointment shall be given, shall be deemed to be or shall be entered or paid for as the gamekeeper or male servant of the lord or steward making such appointment or deputation, anything in any act or acts contained to the contrary notwithstanding.”⁴

⁴ *Cost of Gamekeeper's Licence, &c.]*—The price of a gamekeeper's licence to kill game is 2*l.* duty, whether he is the servant of the owner of the game or of another person, by 23 & 24 Vict. c. 90, s. 2; and 1*l.* 1*s.* for the tax as a servant 16 & 17 Vict. above eighteen years of age, by 16 & 17 Vict. c. 90, Schedule C. The duty on a servant in the capacity of underkeeper is 10*s.* 6*d.* If the gamekeeper is to sell game, he must have a 3*l.* licence (23 & 24 Vict. c. 90, s. 13; 1 & 2 Will. 4, c. 32, s. 6). A separate licence is required for each manor where

Sect. 15 enacts,—“That it shall be lawful for 1 & 2 Will. 4,
c. 32.
every person who shall be entitled to kill the game upon any lands in Wales of the clear annual value of five hundred pounds, whereof he shall be seized in fee or as of freehold, or to which he shall otherwise be beneficially entitled in his own right, if such lands shall not be within the bounds of any manor, lordship or royalty, or if, being within the same, they shall have been enfranchised or alienated therefrom, to appoint, by writing under his hand and seal, a gamekeeper or gamekeepers to preserve or kill the game over and upon such his lands [but not by night with firearms, 11 & 12 Vict. c. 29, s. 5, Chap. VI.], and also over and upon the lands in Wales of any other person, who, being entitled to kill the game upon such last-mentioned lands, shall by licence in writing authorize him to appoint a gamekeeper or gamekeepers to preserve or kill the game thereupon, such last-mentioned lands not being within the bounds of any manor, lordship or royalty, or having been enfranchised or alienated therefrom ;—and it shall be lawful for the person so appointing a gamekeeper or gamekeepers to authorize him or them to seize and take, for the use of the person so appointing, upon the lands of which he or they shall be appointed gamekeeper or gamekeepers, all such dogs, nets and other engines and instruments for the killing or taking of game as shall be used upon the said lands by any person not authorized to kill game for want of a game certificate ” [now an excise “ licence to kill game,” 23 & 24 Vict. c. 90, s. 6, Chap. V.].

Regulations respecting appointment of game-keepers in Wales.

Sect. 15.

there are distinct deputations (see p. 69, n. 20). There will also be the tax for keeping a dog of 12*s.* each, by 16 & 17 Vict. c. 90, Schedule G.; but no person is chargeable with more than 3*fl.* 12*s.* for any number of bounds, or 9*fl.* for any number of greyhounds, kept by him in any year. See Chap. V., *post*, as to the grant of licence.

⁵ The same power is not given to similar persons in England; the reason for which is said to be that nearly all the manors in Wales are in the hands of the Crown.

1 & 2 Will. 4, c. 32. Sect. 16 enacts,—“That no appointment or deputation of any person as a gamekeeper by virtue of this act shall be valid unless and until it shall be registered with the clerk of the peace for the county, riding, division, liberty, franchise, city or town, wherein the manor, lordship or royalty, or reputed manor, lordship or royalty, or the lands shall be situate, for or in respect of which such person shall have been appointed gamekeeper ;—and in case the appointment of any person as gamekeeper shall expire or be revoked, by dismissal or otherwise, all powers and authorities given to him by virtue of this act shall immediately cease and determine.”⁶

Sect. 16. All appointments of gamekeepers to be registered with the clerk of the peace. Sect. 16 enacts,—“That no appointment or deputation of any person as a gamekeeper by virtue of this act shall be valid unless and until it shall be registered with the clerk of the peace for the county, riding, division, liberty, franchise, city or town, wherein the manor, lordship or royalty, or reputed manor, lordship or royalty, or the lands shall be situate, for or in respect of which such person shall have been appointed gamekeeper ;—and in case the appointment of any person as gamekeeper shall expire or be revoked, by dismissal or otherwise, all powers and authorities given to him by virtue of this act shall immediately cease and determine.”⁶

Certificated persons may sell game to licensed dealers. Sect. 17 enacts,—“That every person who shall have obtained an annual game certificate [now an “excise licence to kill game,” 23 & 24 Vict. c. 90, s. 6, Chap. V.] shall have power to sell game to any person licensed to deal in game according to the provisions hereinafter mentioned :”—provided always, that no game certificate on which a less duty than three pounds thirteen shillings and sixpence is chargeable under the acts relating to game certificates,⁷ shall authorize any gamekeeper to sell any game, except on the account and with the written authority of the master whose gamekeeper he is ;—but that any such gamekeeper selling any game not on the account and with the written authority of

Sect. 17.

⁶ The clerk of the peace's fee for registering is usually 5*s.* (Bell, G. L. 86). By 23 & 24 Vict. 90, ss. 7, 8, pp. 67, 68, the gamekeeper's licence may be continued to his successor on the deputation being revoked or his leaving the service.

⁷ By 23 & 24 Vict. c. 90, s. 13 proviso in Chap. X.), no person can sell game to a licensed dealer, unless he has taken out a 3*l.* licence under that act ; and see note⁸, *infra*.

23 & 24 Vict. c. 90, s. 6. ⁸ By s. 6 of 23 & 24 Vict. c. 90 (which has, as regards England, changed the “game certificate” into a “licence to kill game,” Chap. V.), it is enacted,—“that wherever, in the said last-mentioned act [1 & 2 Will. 4, c. 32], the duty of 3*l.* 13*s.* 6*d.* on a game certificate is mentioned, the duty of 3*l.* on a licence to kill game shall be read in lieu.”

such master may be proceeded against under this 1 & 2 Will. 4, act, in the same manner to all intents and purposes ^{c. 32.} as if he had no game certificate whatsoever.”⁹

The other powers of gamekeepers will be treated <sup>Other powers
of game-
keepers.</sup> of under other chapters, viz. :—

Their authority to demand to see the licences of persons sporting on the manor, and to give their names, &c. (23 & 24 Vict. c. 90, s. 10, p. 72, Chap. V.)

The grant of licences to gamekeepers, and their authority under them (Chap. V.)

Their authority to require trespassers to quit the land (1 & 2 Will. 4, c. 32, ss. 31, 32, 36, Chap. VII).

Their authority to apprehend persons poaching by night, &c. (Chap. XIII. “*Poaching by Night*”).

Keepers of Her Majesty’s forests, &c., have also power to order trespassers off the forests, &c. (1 & 2 Will. 4, c. 32, s. 31, Chap. VII.)

But it should be remarked that gamekeepers have no authority to act in highways under the Poaching Prevention Act, 25 & 26 Vict. c. 114 (Chap. XVI.), like constables.

The enactments as to the protection of game- <sup>Protection to
game-
keepers.</sup> keepers from assaults, &c., are referred to under Chap. XIII. “*Poaching by Night*,” and Chap. XIV., “*Hunting and Killing Deer*.”

* If the gamekeeper knowingly sold game on his own account, not having a *3l.* licence, he would be liable to the penalty here referred to under 1 & 2 Will. 4, c. 32, s. 25, *post*, Chap. XI., not exceeding *2l.* for every head of game sold or offered for sale. Of course, the sale must take place within the shooting season and days of grace allowed by s. 3, *ante*, p. 47, otherwise the gamekeeper would be liable to an additional penalty imposed by the section 4 (in Chap. XI.) in respect of certain *birds* of game.

1 & 2 WILL. 4,
c. 32.

FORMS.

4. Appointment or deputation of a gamekeeper (1 & 2 Will. 4, c. 32, ss. 13, 14, 15).

KNOW ALL MEN BY THESE PRESENTS, that I, A. B., of &c., esquire, lord of the manor of D., in the county of K., by these presents, Do nominate, authorize, appoint and depute T. M., of &c., gamekeeper, to be my gamekeeper of and within my said manor¹⁰ of D., with all the royalties, rights, members and appurtenances thereto belonging, during my will and pleasure, with full power, licence, and authority¹¹ [to kill any hare, pheasant, partridge, conies, or other game whatsoever, and wild fowl and ferrets, in and upon my said manor, for my sole use and immediate benefit; *And also*] to take and seize for my use all greyhounds, setters, lurchers, or other sporting dogs; *And all* ferrets, guns, bows, trammels, snow-bells, hayes, wires, harepipes, snares or other engines used for the purpose of taking or killing of [hares, pheasants, partridges, conies or other] game [whatsoever] which shall be used within the¹² precincts of my said manor, by any person or persons who by law shall be prohibited from keeping or using the same, or who shall not be duly qualified or authorized to use the same within¹³ my said manor; *And further*, that I hereby give and grant unto the said T. M., during my said will and pleasure, full power and authority to do all and every act or acts, thing or things whatsoever, which by the laws of this realm are requisite and necessary for the preservation of the game within¹³ my said manor, and for the discovery of of-

¹⁰ Or if the appointment be of part of a manor say,—“district and division of the parish [or ‘tything, hamlet, or place’] of W., being part of my said manor, lordship, or royalty of D.” If in Wales say,—“manor, lordship, or royalty of W., in the county of D., in the principality of Wales.” It is submitted that more than one manor can be included in a deputation signed by the same lord, but *quare*, would separate game licences be necessary in respect of each manor. See Assessed Tax Cases, Nos. 17, 18, p. 70, note²⁰. A manor extending over several parishes may be included, it is apprehended, in one deputation, but it is prudent not to include in it any place which is not strictly a manor, lordship or royalty, &c. A separate deputation seems to be necessary for each person appointed or deputed.

¹¹ If not authorized to kill game, omit the words within brackets.

¹² Or “such.”

¹³ Or “such precincts of.”

fenders therein against the laws and statutes in that case 1 & 2 Will. 4,
made and provided.¹⁴ c. 32.

Given under my hand and seal this — day of —,
18—. Signed, &c. A. B. (L.S.)

[The stamp on this appointment will be 35s. by 55
Geo. 3, c. 184, tit. "Grant."]

I, A. B., clerk of the peace for the county of K. [*or 5. Certificate of clerk of* the peace.], do hereby declare that T. M. hath this day registered a deputation, whereby he is appointed a gamekeeper by — for the manor [*or lands, if in Wales*] of —, which I do hereby certify in pursuance of the act of the 1st and 2nd years of King William the Fourth, intituled "An Act to amend the Laws in England relative to Game."

Witness my hand, this — day of — 18—.

A. B.

¹⁴ If the deputy is to have a similar power over a river or fishery, of which the lord is owner or occupier, the following clause may be added:—" And also to seize, detain and keep for my own use all nets, angles, leaps, pitches and other engines which he shall find used, laid up, or in the custody or possession of any person or persons whomsoever using the same without my consent, within my said manor, lordship or royalty."

CHAPTER V.

THE LICENCES TO KILL GAME, DEER, &c.
THROUGHOUT THE UNITED KINGDOM.

^{23 & 24 Vict.} ^{c. 90.} BEFORE the 23 & 24 Vict. c. 90, a "game certificate" was the name given to the governmental authority to take or kill game, but by that act an excise "licence to kill game" is substituted for England and Scotland, and the system of surcharges on game certificates abolished throughout the kingdom; the term "game certificate" in the prior acts being in future to be construed to mean a "licence to kill game" under the 23 & 24 Vict. c. 90 (*Id. s. 6*), except in Ireland, where its former name of a "certificate" is retained. This act is irrespective of the game laws or acts, and the want of the licence or certificate herein mentioned is a distinct offence against the revenue. A licence is now required to kill deer also, but some of the provisions of that act do not relate to deer. The enactments of the English act 1 & 2 Will. 4, c. 32, are not affected by those of the 23 & 24 Vict. c. 90, for ^{1 & 2 Will. 4, c. 32, not to affect the existing laws respecting game certificates.} 1 & 2 Will. 4, c. 32, s. 5, enacts,— "That nothing in this act contained shall in anywise affect or alter (except as hereinafter mentioned) any act or acts now in force by which any persons using any dog, gun, net, or other engine, for the purpose of taking or killing any game whatever, or any woodcock, snipe, quail or landrail, or any conies, are required to obtain and have annual game certificates [“licences to kill game”], but that all persons who, before the commencement of this act, were required

to obtain and have such certificate shall after the ^{23 & 24 Vict.}
 commencement of this act be required from time to
 time to obtain and have the like certificates;—and all
 the powers, provisions and penalties, contained in
 such act or acts, shall continue in as full force and
 effect as if this act had not been made;—and that all
 regulations and provisions contained in *any act or
 acts* relative to game certificates [“licences to kill
 game”], so far as they relate to gamekeepers of
 manors, and to the amount of duty for game certi-
 ficates to be charged upon or in respect of game-
 keepers of manors in the cases specified in such act
 or acts, shall extend and apply to all gamekeepers
 of lands appointed under this act [*i.e.* in Wales
 under s. 15, ante, p. 53] as fully and effectually as
 if they were gamekeepers of manors, and were
 expressly mentioned in and charged by such act or
 acts.”¹

But as regards Ireland, it is still governed, except ^{Ireland.}
 as to the amount of the duties, by its own act, 5 & 6
 Vict. c. 81 (set out at pp. 74—76), which we pur-
 pose to point out in the notes to 23 & 24 Vict. c. 90.

The provisions of the 23 & 24 Vict. c. 90,² hereon,
 which is the only act applicable to England and
 Scotland in respect to game licences, are as fol-
 lows:—

Sect. 1. “From and after the passing of this act After passing
 the respective duties of assessed taxes now payable ^{of this act}
 under the several acts of parliament in that behalf
 in respect of certificates to kill game in Great
 Britain, and to deal in game in England, and all <sup>the duties in
 respect of</sup>
 the provisions, rules and directions for assessing,
 charging and collecting any of the said duties con- <sup>certificates to
 kill and deal
 in game, as
 contained in
 52 Geo. 3,
 c. 93, sched.
 (L.), 56 Geo.
 3, c. 56, and
 1 & 2 Will. 4,
 c. 33, repeal-
 ed.</sup>

¹ This provision refers to the act then in force regulating
 “game certificates,” 52 Geo. 3, c. 93 (Sched. L.), which is
 superseded by 23 & 24 Vict. c. 90, *infra*.

² Passed on 13th August, 1860, and intituled “An Act to
 repeal the Duties on Game Certificates and Certificates to
 deal in Game, and to impose in lieu thereof Duties on Excise
 Licences and Certificates for the like purposes.”

23 & 24 Vict. c. 90. tained in schedule (L.) of the act passed in the fifty-second year of King George the Third, chapter ninety-three,—and also the duties now payable in Ireland under the act passed in the fifty-sixth year of King George the Third, chapter fifty-six, in respect of every certificate of having registered a deputation as a gamekeeper, and in respect of every certificate to authorize any person, not being a gamekeeper, to kill game in Ireland,³—and also the nineteenth and twentieth sections of the act passed in the first and second years of King William the Fourth, chapter thirty-two,⁴ shall respectively cease and determine, and the same are hereby repealed, except as to any arrears of the said duties respectively, and as to any penalties incurred before the commencement of this act.”

In lieu of duties repealed, the duties herein named to be levied.

Sect. 2.

Sect. 2. “In lieu of the duties hereby repealed there shall be granted, charged, and paid for and upon the several licences and certificates to take or kill game, and licences to deal in game hereinafter mentioned, the respective duties or sums of money hereinafter expressed or denoted ; (that is to say,) ”

£ s. d.

For a licence in Great Britain or a certificate in Ireland to be taken out by every person who shall use any dog, gun, net or other engine, for the purpose of taking or killing any game

³ The duty on game certificates in Ireland is now the same as that on game licences in England, except that gamekeepers are charged the same amount of duty as on licences to kill game by persons not being gamekeepers, either 3*l.* or 2*l.*, according as they expire on October 31st or on April 5th. There are no assessed taxes there on servants or dogs.

1 & 2 Will. 4, c. 32, ss. 19, 20 (repealed). ⁴ The 1 & 2 Will. 4, c. 32, s. 19, required persons having the justices' licence to deal in game to take out a government licence annually, with a duty of 2*l.*, under a penalty of 20*l.* (the substituted provision being 23 & 24 Vict. c. 90, s. 14, Chap. X.); and s. 20 required collectors of assessed taxes to make out lists of persons licensed, and provided for the charging of the duty. See now 23 & 24 Vict. c. 90, s. 3, p. 62, and 15, Chap. X.

£ s. d. 28 & 24 Vict.
c. 90.

whatever, or any woodcock, snipe, quail or landrail, or any conies, or any deer, or shall take or kill by any means whatever, or shall assist in any manner in the taking or killing by any means whatever of any game, or any woodcock, snipe, quail or landrail, or any coney, or any deer:⁵

If such licence or certificate shall be taken out after the fifth day of April and before the first day of November,

To expire on the fifth day of April in the following year

3 0 0 To expire April 5th.

To expire on the thirty-first day of October in the same year in which the licence or certificate shall be taken out

2 0 0 To expire October 31st.

If such licence or certificate shall be taken out on or after the first day of November,

To expire on the fifth day of April following . . .

2 0 0 Gamekeeper.

Provided always, that any person having the right to kill game on any lands in England or Scotland shall be entitled to take out a licence to authorize any servant for whom he shall be chargeable to the duty of as-

⁵ There is no definition of the word "game" as used in this act, but it must be taken to be in England the same as in the 1 & 2 Will. 4, c. 32, s. 2, *ante*, p. 46; but see the Introduction as to its definition in Scotland and Ireland. "Deer" is not included in any provision, except expressly mentioned. As to conies or rabbits in Ireland, the 23 & 24 Vict. c. 113, s. 43, amends this and enacts, "that notwithstanding anything in the said act contained, no person shall be required to take out any licence or certificate to authorize the taking or killing of *rabbets* in Ireland." As to the offence, see note to s. 4, *post*.

23 & 24 Vict.
c. 90.

Dealer in
game.

Duties grant-
ed to be ex-
cise duties
under the
commission-
ers of Inland
Revenue.

Sect. 3.

Licence to be
taken out for
taking or
killing game
&c. in Great
Britain.

Sect. 4.

£ s. d.

seased taxes as a gamekeeper,⁶ to kill
game upon the same lands, upon pay-
ment of the duty of 2 0 0

And for every licence to deal in
game in England,⁷ Scotland or
Ireland, to be granted under this
act 2 0 0"

Sect. 3. "The duties by this act granted shall
be under the management of the commissioners of
inland revenue, and shall be deemed to be excise
duties,—and all the powers, provisions, clauses,
regulations and directions contained in any act
relating to excise duties or to penalties under excise
acts, and now or hereafter in force, shall respec-
tively be of full force and effect with respect to the
duties by this act granted, and to the penalties
hereby imposed, so far as the same are or may be
applicable, and shall be observed, applied and en-
forced for and in the collecting, securing and re-
covering of the said duties and penalties hereby
granted and imposed respectively, and otherwise
in relation thereto, so far as the same shall be con-
sistent with and not superseded by the express pro-
visions of this act, as fully and effectually as if the
same had been herein repeated and specially enacted
in this act with reference to the said last-mentioned
duties and penalties respectively."⁸

Sect. 4. "Every person *before* he shall in Great
Britain take, kill or pursue, or aid or assist in any
manner in the taking, killing or pursuing by any
means whatever,—or use any dog, gun, net or other
engine for the purpose of taking, killing or pur-
sing—any game—or any woodcock, snipe, quail or

⁶ As to these assessed taxes in England and Scotland and
the duties chargeable on gamekeepers, see note ⁴, *ante*, p. 62.
As to Ireland, see note ³, p. 60.

⁷ As to the grant of these licences, see Chap. X., *post*.

⁸ The 5 & 6 Vict. c. 81, s. 1, as to Ireland, contained a
similar provision. The mode of recovery of the penalties
under the Excise Acts here referred to are specially treated
of in Chap. XVII., *post*. See note ¹⁰, *infra*.

landrail, or any coney,—or any deer,—shall take 23 & 24 Vict. out a proper licence to kill game under this act, and pay the duty hereby made payable thereon ;— and if any person shall do any such act as herein-^{c. 90.} before mentioned in Great Britain⁹ without having duly taken out and having in force such licence as aforesaid, he shall forfeit the sum of twenty pounds.”¹⁰

⁹ In Ireland no licence, as will be seen by note ⁸, *ante*, p. 61, is required for rabbits. This offence in Ireland is provided for by the 5 & 6 Vict. c. 81, s. 5, *post*, p. 75.

¹⁰ See Chap. XVII., *post*, for the mode of recovering this excise penalty. The party is also liable to the cumulative penalty of 5*l.* by 1 & 2 Will. 4, c. 32, s. 23, in England, in respect of *game* only and not deer. (Chap. VIII.). The offence enacted by this section is the using, and not the mere possession, of a dog, &c. for the purpose stated, and any evidence from which that intent may be reasonably inferred is sufficient to convict the defendant ;—as with gun or dog walking about and apparently looking for game, or acting as a sportsman, is evidence of the user (*R. v. King*, 1 Sess. Cas. 88; *Hebden v. Hentley*, 1 Chit. Rep. 607), although no shots were heard (Ass. Tax., App. Cas. 2189), or where shots were heard and birds were flying away (Id. Nos. 2292, 2561; *R. v. Davis*, 6 T. R. 177); carrying a gun without a dog and beating for game (Ass. Tax., App. Cas. 2507), and also with a dog only, where game is likely to be found, though asserting that he was looking for rabbits and had permission from the occupier to shoot (Id. Nos. 2505, 2506, 2523). A person under 21 is liable (Id. No. 2525). The licence must be actually obtained, and not merely the duty paid to an agent, before the act requiring the licence is done (Id. Nos. 1391, 1782, 1195, 1183, 2434, 2435). As to the persons aiding and assisting in taking game, see 3rd exemption in sect. 5, *infra*, and cases thereunder. There is now, since the repeal of 52 Geo. 3, c. 93, Sched. L. (*ante*, pp. 59, 60), neither a surcharge of the duty by the surveyor of taxes under 6 & 7 Will. 4, c. 65, s. 8, as before the 23 & 24 Vict. c. 90, when the duty was an assessed tax, nor a charge or assessment of the duty, or any liability to pay the duty by any other proceeding, and the only mode of getting the game licence duty is by proceeding against the offender under this section. The Excise Act (4 & 5 Will. 4, 4 & 5 Will. 4, c. 51, s. 11), which applies to the recovery of duty from excise traders, cannot be applied to the recovery of any duty under 23 & 24 Vict. c. 90, as those granted by it are not specially directed by it to be charged or assessed upon the persons liable. A conviction for a trespass forfeits the licence (23 & 24 Vict. c. 90, s. 11, *post*, p. 71).

Penalty for neglect.

23 & 24 Vict. c. 90.

Exemptions and exceptions from the duties.

Sect. 5. “The following exceptions and exemptions from the duties and provisions of this act are hereby made and granted ; (that is to say,) ”

Exceptions.

Exceptions.

1. The taking of woodcocks and snipes with nets or springs in Great Britain.
2. The taking or destroying of conies in Great Britain by the proprietor of any warren or of any inclosed ground whatever, or by the tenant of lands, either by himself or by his direction or permission.¹¹
3. The pursuing and killing of hares respectively

Sect. 5.

¹¹ The following assessed tax appeal cases have been decided on a similar exception to this in the repealed act, 52 Geo. 3, c. 93, Schedule L :—The word “warren” being used in its popular sense as land exclusively used for the keeping of rabbits, the rector of the rabbits is proprietor of a warren (No. 251). A mere written request from an owner of land to another to come and kill rabbits is within this exception (No. 1070) ; and the owner may authorize any other person to do so (No. 1243) as well as his labourer (No. 2055). A burgess who shot rabbits on his common was held by the judges to be an owner within the act, though the appellant would not swear he did not beat for game (No. 1373) ; whereas where the appellant killed the rabbits for his own use, though with the owner’s licence, he was not relieved from the duty (No. 641). An unlimited permission to shoot rabbits may well consist with this exception (No. 2293), but it seems that the authority should come from the tenant. Therefore if A. has leave from B., and he goes on C.’s land without leave, he must take the consequences (No. 2364). The words “direction or permission” (in the 52 Geo. 3, c. 93, it was “direction or command”) are not confined to destroying the rabbits for hire. It is quite sufficient if the tenant gives a general permission (No. 2388), and it need not be in writing, although it is advisable as a precaution that it should be ; but of course the permission must precede the act complained of. The onus of proving the exemption lies on the person charged (No. 1931) ; Woolrych, G. L., p. 62, n. *Vide* also the cases of *Spicer v. Barnard* and *Padwick v. King*, Chap. VI., and *Morden v. Porter* and other cases, Chap. VII., decided in respect to trespasses after rabbits by the permission of occupiers, whose leases reserved *game* only. See a form of written permission, No. 12, Chap. VI.

by coursing with greyhounds, or by hunting ^{23 & 24 Vict.}
^{c. 90.} with beagles or other hounds.¹²

4. The pursuing and killing of deer by hunting with hounds.¹³
5. The taking and killing of deer in any inclosed lands by the owner or occupier of such lands, or by his direction or permission.

Exemptions.

- | | |
|---|--------------------------------|
| <ol style="list-style-type: none"> 1. Any of the royal family. 2. Any person appointed a gamekeeper on behalf of her majesty by the commissioners of her majesty's woods, forests and land revenues, under the authority of any act of parliament relating to the land revenues of the crown.¹⁴ 3. Any person aiding or assisting in the taking or killing of any game, or any woodcock, snipe, quail, landrail or coney, or any deer, in the company or presence and for the use of another person who shall have duly obtained, according to the directions of this act, and in his own right, a licence to kill game, and who shall by virtue of such licence then and there use his own dog, gun, net or other engine for the taking or killing of such game, woodcock, snipe, quail, landrail, coney or deer, and who shall not act therein by virtue of any deputation or appointment.¹⁵ | <i>Exemptions.</i>
Sect. 5. |
|---|--------------------------------|

¹² This is the same as the provision of 11 & 12 Vict. c. 29, s. 4, still in force in England; and 11 & 12 Vict. c. 30, s. 3 in Scotland. In Ireland a certificate was necessary before this act passed.

¹³ Stag hunting is excepted from the trespass penalty recoverable before justices by 1 & 2 Will. 4, c. 32, s. 35; see Chap. VII.; and as to killing deer, see Chap. XIV.

¹⁴ See note ⁷, *post*, p. 85.

¹⁵ This exemption was before provided by 54 Geo. 3, c. 141, in similar terms, the principle of it being to exempt persons sporting with a licensed person who is using his own

23 & 24 Vict.
c. 90.

Sect. 5.

4. And as regards the killing of hares only, all persons who, under the provisions of the two several acts, 11th and 12th Victoria, chapter 29 and chapter 30 respectively, are authorized to kill hares in England and Scotland

dogs, &c. Under it, it was held that a gamekeeper is not such person as there intended, and therefore a person who joined a gamekeeper, and beat for game, was held liable to the duty (*Ass. Taxes, Appeal Case, No. 726*). A qualified and licensed person may take as many servants or other unlicensed persons to attend him in raising the game as he thinks necessary, and to assist him, without subjecting such servants to any penalty, but the unlicensed persons, although servants, must not shoot; and the acts must be done in the master's presence, so as to be considered his acts (*Ex parte Sylvester*, 9 B. & C. 63; 4 Man. & R. 5; *R. v. Taylor*, 15 East, 460; *Lewis v. Taylor*, 16 East, 49; *Walker v. Mills*, 2 Brod. & B. 1). An unlicensed person with his own gun accompanying a licensed person who shot game, is not exempted from the penalty for aiding and assisting, though he did not use the gun (*Ass. Tax., App. Cas. Nos. 1396, 2215, 2166, 2436, 2364*); but where a servant caught game in a snare, which his master had previously set, and took it to him, the servant was relieved (*Id. No. 2055*). The dogs, &c., here referred to as used means strictly the dogs, &c., of the licensed person, as will be seen from the numerous cases decided by the judges on appeal from the commissioners of assed taxes; and, therefore, if the licensed person has not his own dog, &c., with him while sporting, or if, when there are more than one person present together, some or one of them use borrowed dogs, the unlicensed person or persons accompanying such licensed person and assisting are each liable to the penalty; and so also if the unlicensed person or persons use his or their own dogs, &c., in the company of the licensed person (*Locke*, G. L. 144; *Woolrych*, G. L. 77). The qualified and licensed person must in all cases be present at the time an unlicensed person is assisting him. But a mere spectator of the sport is not liable (*Ass. Taxes, App. Case, No. 205*); nor is a person who merely joins in the pursuit, but neither beats for game nor assists in killing it, although he may be present when it is killed, and occasionally carrying a second gun for the licensed person (*Id. No. 470, 138, 1687, 2560*). A minor is liable to the penalty (*Id. No. 2525*). If a man in one parish or county shoots at game in another, he uses the gun where he stands (2 Stark. Evid. 364).

respectively, without obtaining an annual ^{23 & 24 Vict.}
^{c. 90.} game certificate.”¹⁶

Sect. 6 enacts,—“That nothing herein contained shall extend to repeal, alter or affect any of the provisions of the said two several acts of the eleventh and twelfth years of her majesty, chapter twenty-nine, and chapter thirty, further than that the term ‘game certificate’ in the said acts respectively used shall be construed to mean a licence to kill game under the provisions of this act, and shall be so read accordingly ;—and that the term ‘game certificate’ used in the act of the first and second years of King William the Fourth, chapter thirty-two, shall be construed and read in like manner ;—and that wherever in the said last-mentioned act the duty of three pounds thirteen shillings and sixpence on a game certificate is mentioned the duty of three pounds on a licence to kill game shall be read in lieu.”

Sect. 7. “Any person having the right to kill game on any lands in England or Scotland, and being charged or liable to be charged to the assessed tax on servants, in respect of any gamekeeper, by whomsoever deputed or appointed, and whether deputed or appointed or not,—and any person granting a deputation or appointment in Great Britain to the servant of any other person who shall be duly charged to the assessed tax on servants in respect of such servant, whether as gamekeeper or in any other capacity, with power and authority to take or kill any game,¹⁷—shall respectively be at liberty to take out a licence to kill game on behalf of any such servant, on payment of the duty of two pounds for the year ending on the

Nothing
herein to
alter 11 & 12
Vict. c. 29
and 30, ex-
cept that
“game certi-
ficate” in
said acts,
and also in
1 & 2 Will. 4,
c. 32, shall
be read as
“licence to
kill game.”

Sect. 6.

Licences may
be taken out
on behalf of
assessed ser-
vants acting
as game-
keepers for
persons hav-
ing right to
kill game, or
under depu-
tations from
lords of
manors.

Sect. 7.

¹⁶ For the 11 & 12 Vict. c. 29, see Chap. VI., and for the 11 & 12 Vict. c. 30, see Chap. XVIII. There is no corresponding act for Ireland, but see exception 3, applicable there.

¹⁷ See 1 & 2 Will. 4, c. 32, s. 18, *ante*, p. 50, as to appoint-
ment of gamekeepers, and s. 14, *ante*, p. 52, as to granting
deputations.

^{23 & 24 Vict.} ¹⁸ fifth day of April, and such licence shall exempt c. 90. the servant named therein during his continuance in the same capacity and service, and on his quitting such service shall also exempt any servant who shall succeed him in the same service and capacity, or who shall succeed to the deputation of the same manor or royalty or lands within the year for which the licence is granted, during the remainder of such year;—and no such servant on whose behalf a licence shall have been duly obtained as aforesaid shall be required to obtain a licence for himself, or be liable to any penalty by reason of not obtaining a licence in his own name.”

Sect. 7.

On change of gamekeeper, or revocation of deputation, licence may be continued to successor.

Sect. 8. “Every such licence to kill game taken out on behalf of any such servant as aforesaid shall, upon the revocation of any such deputation or appointment, or on his quitting the service of the master by whom such licence shall have been taken out, be from thenceforth of no further effect as to the person named therein as such servant, or so

^{1 & 2 Will. 4,} ¹⁸ By 1 & 2 Will. 4, c. 32, s. 6 (proviso), no “game certificate,” on which a less duty than 3*l.* 13*s.* 6*d.* is chargeable under the acts relating to game certificates [which must now be read as “licences to kill game” at a duty of 3*l.*, 23 & 24 Vict. c. 90, s. 6, p. 31], “shall authorize any gamekeeper to kill or take any game, or to use any dog, gun, net or other engine or instrument for the purpose of killing or taking game, except within the limits included in his appointment as gamekeeper; but that in any case where such gamekeeper shall kill or take any game, or use any dog, gun, net or other engine or instrument for the purpose of killing or taking game, beyond such limits as aforesaid, he may be proceeded against under this act, or otherwise, in the same manner to all intents and purposes as if he had no game certificate whatsoever.” *I. e.*, under 23 & 24 Vict. c. 90, s. 4, *ante*, p. 62, for the excise penalty of 20*l.*; under s. 23 of 1 & 2 Will. 4, c. 32, *post*, Chap. VIII., for the cumulative penalty of 5*l.*; and under s. 30 in 2*l.* for the trespass upon the lands out of the limits of his appointment, or subject to an action at law. As to how far he may assist his master without being liable to the penalty, see note 15, *ante*, p. 65, and see s. 9, *post*, p. 69, and notes. As to the gamekeeper’s right to sell game, see 1 & 2 Will. 4, c. 32, s. 17, *ante*, p. 54, and notes thereto.

deputed or appointed as aforesaid;—but if within 23 & 24 Vict. c. 90.
the year for which such licence was granted the said master, on the quitting of such servant, shall employ another servant as gamekeeper in his stead, or the person by whom such deputation or appointment was made shall, on the revocation thereof, make a new deputation or appointment to any person in his service, or in the service of the same Sect. 8.
master by whom such licence shall have been taken out, and who shall have been charged or be chargeable to the said assessed tax on servants as aforesaid, the officer by whom such licence was granted, or the proper officer appointed by the commissioners in that behalf, shall renew such licence for the remainder of that year, on behalf of the fresh servant or the person so newly appointed, as the case may be, without payment of any further duty, by indorsing on such licence the name and place of abode of the said last-mentioned servant, or the person to whom such last-mentioned deputation or appointment shall have been granted, and declaring the same to be a renewed licence free of duty.”¹⁹ [Vide form of indorsement, No. 11, *post*, p. 79.]

Sect. 9. “Provided always, That no such licence taken out for or on behalf of any person being such servant or acting under a deputation or appointment as aforesaid shall be available for such person in any suit or prosecution where proof shall be given of his doing or having done any act for which a licence is required under this act on land on which his master had not a right to kill game.”²⁰

Such licences
not available
for acts done
out of limits
of the manor
or lands for
which the
parties are
appointed
game-
keepers.

Sect. 9.

¹⁹ If the excise officer should neglect this duty, information should be given to the commissioners, as there is no penalty imposed for such neglect. In Ireland the corresponding provision is 5 & 6 Vict. c. 81, s. 7, *post*, p. 75.

²⁰ See also 1 & 2 Will. 4, c. 32, s. 13, *ante*, p. 50. This clause does not apply to persons other than servants who have deputations granted under s. 14, *ante*, p. 52. The following assessed tax cases were decided under rule 7 of Schedule L., of 52 Geo. 3, c. 93, which was similar to this enactment. Where a person shot rabbits on ground not within his depu-

23 & 24 Vict. c. 90.
By whom licences shall be granted, and form thereof.

Sect. 16.

Duration and expiration of licences.

Sect. 16. “All licences and certificates to kill game and to deal in game respectively, under the provisions of this act, shall be in such form ²¹ as the Commissioners of Inland Revenue shall from time to time provide in that behalf,—and shall denote the amount of duty charged thereon respectively,—and shall be granted, signed and issued at the chief office of Inland Revenue in London, Edinburgh and Dublin respectively, and by the several supervisors of excise in their respective districts, or by such other officers of Inland Revenue and at such places as the said commissioners shall think fit to employ and appoint respectively in that behalf;²²—and every such licence shall contain the proper christian and surname and place of residence of the person to whom the same shall be granted, with any other particulars which the Commissioners of Inland Revenue may direct to be inserted therein, and shall be dated on the day when the same was actually issued, and shall have effect and be in force upon the day of the issuing thereof, and shall expire on the day therein mentioned for the termination thereof.”

tation, and for his own use, he was held liable to the duty (Ass. Tax, Appeal Cas. No. 1395). Gamekeepers being assessed servants, and appointed for several manors, all in one county, by separate deputations signed by different lords, must have a game licence for each manor (*Id.*, Nos. 17 and 18). The form of licence to a gamekeeper, No. 10, p. 79, does not state the manor. If the places for which the gamekeeper is appointed are not each of them manors or royalties the gamekeeper will be liable to the duty in respect of such as are not manors (*Id.*, No. 1149). See also cases, Nos. 572 and 2389, as to the acting out of the manor, which appear to be contradictory of one another.

²¹ *Vide* forms of these licences, *post*, pp. 78, 79.

²² In London, Edinburgh and Dublin they may be obtained from collectors of excise; in other places from any supervisor of excise, or any distributor or sub-distributor of stamps. See *ante*, p. 7, as to the colour of the paper of these licences, &c.

Sect. 12. “The Commissioners of Inland Revenue ^{23 & 24 Vict. c. 90.}
shall, when and as they shall see fit, cause lists of
the names and residences of the several persons to
or for whom licences to kill game have been granted
under this act, to be inserted in such newspapers or
*published in such other manner*²³ as to them shall
seem proper, distinguishing in such lists the persons
acting under any deputation, appointment or autho-
rity from others, and the manors, royalties or lands
for which deputations, appointments or authorities
have been granted and also distinguishing the rate
of duty paid for such licences.”

Sect. 18. “Every licence and certificate to kill game taken out respectively in Great Britain and Ireland under this act, by or on behalf of any person in his own right, and not as a gamekeeper or servant, shall be available for the killing of game in any part of the United Kingdom.”²⁴

Sect. 11. “If any person, having obtained a licence to kill game under this act, shall be convicted of any offence under section thirty of the said act of the first and second years of King William the Fourth, chapter thirty-two,—or under the act of the second and third years of King William the

Commissioners to publish lists of persons licensed to kill game.

Sect. 12.

Sect. 18.

Licences and certificates to be available throughout the United Kingdom.
Licence to be void if party be convicted of any offence under 1 & 2 Will. 4, c. 32, or 2 & 3 Will. 4, c. 68 [Trespass in Scotland].

Sect. 11.

²³ The publication of these game lists or advertisements in the newspapers has been discontinued, and a great saving effected, to the revenue; and the practice now is for a list to be printed of the licences taken out in each excise collection, and copies of the lists are furnished by the officers to any person requiring them, without payment. In Ireland the corresponding section is 5 & 6 Vict. c. 81, s. 6, *post*, p. 75.

²⁴ This, of course, is subject to the law of trespass as provided by 1 & 2 Will. 4, c. 32, s. 6, as to England, which enacts,—“That every person who shall have obtained an annual game certificate [now to be read a “licence to kill game”] shall be authorized to kill and take game, subject always to an action, or to such other proceedings as are hereinafter [in s. 30, Chap. VII.] mentioned, for any trespass by him committed in search or pursuit of game.” As to Scotland, see 2 & 3 Will. 4, c. 68, s. 1, Chap. XVIII. It will be seen, also, that on conviction before justices of a trespass the licence becomes void [s. 11, *infra*].

23 & 24 Vict. c. 90. Fourth, chapter sixty-eight, the said licence shall thenceforth be null and void.²⁵

No person to sell to dealer unless he has a 3*l.* licence. A proviso to sect. 13 enacts, “That *no person* shall be authorized to sell game to any licensed dealer unless he shall have taken out a three-pound licence under this act.”²⁶

Persons doing any act requiring a licence to kill game, to produce the same, on demand, or declare their names, places of residence, &c.

Sect. 10.

If any person shall be discovered doing any act whatever in Great Britain²⁷ in respect whereof a licence to kill game is required under this act,²⁸ by any officer of Inland Revenue,—or by any lord or gamekeeper of the manor, royalty or lands wherein such person shall then be,—or by any person having duly taken out a proper licence to kill game under this act,—or by the owner, landlord, lessee or occupier of the land on which such person shall then be,—it shall be lawful for such officer or other person aforesaid to demand and require from the person so acting the production of a licence to kill game issued to him ;—and the person so acting is hereby required to produce such licence to the person so demanding the production thereof, and to permit him to read the same, and (if he shall

²⁵ In England, see the s. 30, *post*, Chap. VII. In Scotland, see 2 & 3 Will. 4, c. 68, s. 1, Chap. XVIII. Ireland is not named ; nor is there any corresponding provision in the 5 & 6 Vict. c. 81, *post*, p. 74 ; and this section does not apply there.

²⁶ That is, a licence for the full season—from the 5th of April to the 5th of April in the following year (see s. 2, *ante*, pp. 60, 61). This enactment must be taken as a virtual repeal of 1 & 2 Will. 4, c. 32, s. 17, *ante*, p. 54, which provides—“That *every* person who shall have obtained an annual [licence to kill game], shall have power to sell game to any person licensed to deal in game,” so as to confine its operation to *3l.* licences only ; and upon that view, the party *selling* contrary to this prohibition may be treated as “not having obtained” a licence to kill game, and would be liable to the penalty imposed by 1 & 2 Will. 4, c. 32, s. 25, *post*, Chap. XI.

²⁷ In Ireland, the 5 & 6 Vict. c. 81, s. 8, *post*, p. 76, a corresponding provision, is still in force.

²⁸ See sect. 2, *ante*, p. 60, and exceptions and exemptions, s. 5, *ante*, pp. 64, 65.

think fit) to take a copy thereof or of any part ^{23 & 24 Vict.}
 thereof;—or in case no such licence shall be pro-
 duced to the person demanding the same as afore-
 said, then it shall be lawful for the person having
 made such demand to require the person so acting
 forthwith to declare to him his christian and sur-
 name and place of residence, and the place at which
 he shall have taken out such licence.²⁹

“And if such person shall, after such demand made, wilfully refuse to produce and show a licence to kill game issued to him,—or in default thereof as aforesaid to give to the person so demanding the same his christian and surname and place of resi- ^{Penalty for refusal.} ^{Sect. 10.}
 dence, and the place at which he shall have taken out such licence,³⁰—or if he shall produce any false or fictitious licence, or give any false or fictitious name or place,—or if he shall refuse to permit any licence which he may produce to be read,—or a copy thereof or of any part thereof to be taken,—he shall forfeit the sum of twenty pounds.³¹

²⁹ The demand need not be on the land on which the per-
 son has been discovered doing the act, but it must be made so immediately after he has left it, as to form a part of the same transaction; nor is it necessary for the party making the demand to produce his own certificate; but if the party refuse to give his name, it is unnecessary to go on to ask in what place, if any, he took out his licence (per Lord Tenterden in *Scarth v. Gardiner*, 5 C. & P. 38).

³⁰ It was decided under the repealed act, 52 Geo. 3, c. 93 (Rule 11 of Schedule L.), that the penalty in this case is not incurred by the mere refusal to produce the licence, but that the person must also refuse, on request, to tell his christian and surname and place of residence, Lord Ellenborough observing that the act intended that to be the medium of discovery of the person sporting without a certificate (*Molton v. Rogers*, 4 Esp. 215, decided under 25 Geo. 3, c. 50, s. 15). See the cases, *ante*, p. 51, note³, as to the powers of game-keepers to seize the guns of persons trespassing on the manor.

³¹ See Chap. XVII., *post*, for the mode of recovery of this excise penalty, the information for which must be laid by an officer of inland revenue. There can now be no charge or surcharge of the duty. See note¹⁰, *ante*, p. 63.

23 & 24 Vict. c. 90.

Exclusive provisions as to Ireland.

5 & 6 Vict. c. 81, relating to game certificates in Ireland to continue in force.

Sect. 17.

5 & 6 Vict. c. 81.

Persons keeping dogs for killing game, not gamekeepers, to take out certificate.

Gamekeeper to register his deputation with the excise officer, and take out a certificate.

By what off-

The *23 & 24 Vict. c. 90.*, contains also provisions relating exclusively to Ireland. Sect. 19 repeals the *7 & 8 Geo. 4, c. 49*; but sect. 17 retains in force the provisions of the *5 & 6 Vict. c. 81*. It enacts, that “all the clauses, powers, provisions, and regulations, pains and penalties, contained in or imposed by the act passed in the fifth and sixth years of her majesty’s reign, chapter eighty-one, relating to certificates to kill game in Ireland, shall be of full force and effect and shall be applied in Ireland to the certificates to be granted under this act, and the duties hereby imposed thereon, as fully and effectually as if the same were herein repeated and specially enacted in reference to such last-mentioned certificates and duties.” The following are the enactments of *5 & 6 Vict. c. 81* :—

1. Recites *56 Geo. 3, c. 56*, and transfers collection and management of the duties of *3/- 3s.*, payable thereby on gamekeepers and other certificates to kill game in Ireland, to the commissioners of excise; but these duties are repealed by *23 & 24 Vict. c. 90, s. 1, ante*, pp. 59, 60.

2. And be it enacted, That every person in Ireland, not acting as a gamekeeper under and by virtue of a deputation or appointment duly made to him, who shall keep or use any dog, or any gun, net, or engine, for the destruction of game, shall, previously to using the same or killing any game, annually, on payment of the duty granted and imposed thereon as aforesaid, obtain from the officers of excise authorized to grant certificates a certificate authorizing him to kill game.

3. And be it enacted, That every person in Ireland to whom any deputation or appointment as a gamekeeper shall be made by any lord or lady of a manor, or other person authorized to make such deputation or appointment, shall, previously to acting under such deputation or appointment, and in each succeeding year, register the same with the supervisor of excise within whose district any of the manors, lands, or tenements comprised in such appointment, and described therein, shall be situate;—and the officers of excise authorized to grant certificates shall thereupon, on payment of the duty granted and imposed thereon as aforesaid, grant a certificate to such gamekeeper to kill game.

4. And be it enacted, That every such certificate shall be

granted by and under the hands of the supervisor and 5 & 6 Vict. officer of excise of the district within which the person, not being a gamekeeper, shall reside, or within which any of the manors, lands, or tenements comprised and described in the deputation or appointment of any gamekeeper shall be situate, or by such other officer or officers of excise as the commissioners of excise shall authorize and direct to grant the same;—and every such certificate shall be in the form and to the effect set forth in the schedule to this act, with any other particulars the commissioners of excise may direct to be inserted therein, and shall bear date on the day and year on which the same shall be issued, and shall endure and remain in force from thence until the fifth day of July next following the date thereof, and no longer.

c. 81.
cers certif-
icates to be
granted.

5. And be it enacted, That if any person in Ireland shall have, keep, or use any greyhound, hound, pointer, setting dog, spaniel, lurcher, or other dog, or any gun, net, or other engine, for the taking or destruction of any hare, pheasant, partridge, woodcock, snipe, heath fowl (commonly called black game), or grouse (commonly called red game), or any other game whatsoever,—or if any person shall have or obtain any deputation or appointment as a gamekeeper, or shall act as a gamekeeper, without having taken out or renewed a certificate duly granted to him, and then in force, every such person respectively so offending shall forfeit twenty pounds.

6. And be it enacted, That the commissioners of excise shall, if they shall see fit and expedient so to do, so often and at such times in every year as they shall think fit, cause lists of all certificates to kill game granted in Ireland to be inserted in the newspapers circulating in each respective county in Ireland, or in such public newspapers as to them shall seem most proper. [See 23 & 24 Vict. c. 90, s. 12, ante, p. 71.]

Commission-
ers of excise
may publish
lists of certi-
ficated per-
sons.

7. And be it enacted, That if any lord or lady of a manor or other person entitled to make a deputation or appointment, shall make any new deputation or appointment, within the year, of a gamekeeper for any manor or lands, in the room of the person previously appointed, and to whom a certificate shall have been previously issued, and such person so newly appointed shall register such new deputation or appointment with the proper supervisor of excise in the same district in which such former certificate was granted, it shall be lawful for the officers of excise to grant to such newly appointed person a new certificate without the payment of any further duty, and thenceforth every former certificate

Provision for
change of
gamekeeper.

5 & 6 Vict.
c. 81.

granted in the same year, on a deputation or appointment, signed by the same person, shall be thenceforth null and void,—and any person acting under such former certificate shall incur the penalties prescribed for acting as a game-keeper or killing game without a certificate;—provided that the officers of excise granting such further certificate shall write thereon second (third, or fourth and so on,) certificate within this year. [See 23 & 24 Vict. c. 90, s. 8, *ante*, pp. 68, 69.]

Compelling
production of
certificate.

8. And be it enacted, that if any person in Ireland shall be found using any dog, gun, net, or other engine for the taking or destruction of game, it shall be lawful for any officer of excise, or for the occupier of the land where he shall be so found, or for any owner or proprietor of, or any person having any estate whatsoever in the same lands, whether in possession, remainder, reversion, or future interest, or for any person having a certificate then in force, producing the same, to demand and require from the person so using such gun, dog, net, or engine as aforesaid to produce and show a certificate issued to him under this act, and then in force;—and every such person shall, upon such demand and requisition as aforesaid, produce such certificate to the person so requiring and demanding the same, and shall furnish the same to be inspected accordingly;—and if any such person shall wilfully refuse to produce and show a certificate then in force, or shall decline to produce or show the same, or shall refuse, on being required so to do, to give and declare his name and surname, and the place of his residence, or shall give or declare any false or fictitious name, surname, or place of residence, every person so offending shall forfeit fifty pounds;—and it shall be lawful for the officer of excise, or occupier of the land where any person shall be found, who shall, on requisition and demand as aforesaid, refuse to produce such certificate, or who shall refuse to declare his name and surname, and place of residence, or for any other person present at such refusal, to apprehend the person so refusing as aforesaid, and to convey him forthwith before any justice of the peace within whose jurisdiction such offence shall be committed;—and such justice shall proceed to the conviction of such offender, in the same manner as if such offender had been summoned to appear before any justice or justices on information for such offence. [See 23 & 24 Vict. c. 90, s. 10, *ante*, pp. 72, 73.]

9. So much of the act 55 Geo. 3, c. 100, as relates to game certificates, repealed.

10. This act not to repeal or alter the provisions of 7 & 8

Penalty.

Geo. 4, c. 49. [The latter is repealed by 23 & 24 Vict. c. 5 & 6 Vict. c. 81.
90, s. 19.]

[The schedule contains forms of certificates of persons not gamekeepers, and of a gamekeeper, similar to those now in use in England.]



FORMS.

For that you [or he the said A. B.] after the passing of a certain act of parliament, made and passed in the year of our Lord one thousand eight hundred and sixty, and intituled "An Act to repeal the Duties on Game Certificates and Certificates to deal in Game, and to impose in lieu thereof Duties on Excise Licences and Certificates for the like purposes," and within six calendar months before the day of exhibiting this information [or the exhibiting the information in this behalf], to wit, on the —— day of ——, in the year of your Lord ——, at the parish of ——, in the county aforesaid,* unlawfully did take and kill [or pursue] certain game, to wit, a partridge [or a certain woodcock, or as the case may be], without having taken out or having in force such a licence as by the said act was and is required, contrary, &c.

Proceed to the asterisk in the last form, then : unlawfully* 7. *The like, did use a certain dog for the purpose of taking and pursuing* [or a certain gun, &c., for the purpose of taking and killing, or pursuing] *certain game, to wit, a pheasant [or as the case may be], without having taken out or having in force such a licence as by the said act was and is required, contrary, &c.* 8. *The like, using dog, gun, &c., for killing game,* [or as &c. (Id.)]

Proceed to the asterisk in form No. 6, supra, then : A. B. was [or you were] discovered by one E. F., an officer of Inland Revenue.*

[or by one F. G., the lord, or gamekeeper, of the manor or royalty of ——, or of certain lands, or by one G. H., then having duly taken out a proper licence to kill game under the said act, or the owner, or landlord, or lessee, or occupier of certain lands there on which the said A. B. then was], 8. *The like, not producing licence to gamekeeper, officer of Inland Revenue, &c., or refusing to declare name, &c. (Id. s. 10).* there taking [or killing or pursuing, or aiding or assisting in the taking, or killing or pursuing,—or using a certain dog,

23 & 24 Vict. or gun, or net, or engine, for the purpose of taking, or killing or pursuing] certain game, to wit, — [or a certain woodcock, or snipe, or quail, or landrail, or coney, or certain deer, to wit, —],* unlawfully, after demand had been duly made by the said E. F., as such officer of Inland Revenue [*or as the case may be*],* did wilfully refuse to produce and show to the said E. F., as required by the said act, a licence to kill game issued to him the said A. B., [or from the second asterisk*], and not having produced to the said E. F. a licence to kill game issued to him the said A. B., on him the said E. F. then and there demanding and requiring the same, unlawfully did wilfully refuse to give to the said E. F., who then and there demanded and required the same, the christian and surname and place of residence of him [*or you*] the said A. B., and the place at which he [*or you*] shall have taken out such licence], [or from the last asterisk*, for the production of a licence to kill game, issued to [*or for the christian and surname and place of residence of*] him [*or you*] the said A. B., unlawfully did produce to the said E. F. a certain false and fictitious licence, or give a certain false and fictitious name and place of residence], [or from the last asterisk*, for the production of a licence to kill game, issued to him [*or you*] the said A. B., and having produced such licence, unlawfully did refuse to permit the said licence to be read [*or a copy of part of the said licence to be taken by the said E. F.*], contrary, &c.

9. Excise licence to kill game.

LICENCE TO KILL GAME.—No. 1 [*or 2 or 3*].

— Collection.

— District.

No. ____.

£3 0 0

or £2 0 0 [*as the case may be*].³²

I ___, of ___, being duly authorized by the Commissioners of Inland Revenue to grant licences for killing game,

³² There are three forms of licence provided by the Commissioners of Inland Revenue, and this is an adaptation of the three. See Introduction, ante, p. 7, for information as to the respective colours of the paper of these licences.

under the authority and in pursuance of an act passed in the 23 & 24 Vict. twenty-fourth year of the reign of her Majesty Queen Victoria, intituled "An Act to repeal the Duties on Game Certificates and Certificates to deal in Game, and to impose in lieu thereof Duties on Excise Licences and Certificates for the like purposes," do hereby authorize and empower _____, of _____, in the county of _____, to KILL GAME, he having paid the sum of THREE POUNDS [or TWO POUNDS]³³ for this licence.

This licence expires on the fifth day of April [or thirty-first day of October]³³ one thousand eight hundred and sixty—.

Dated and signed this —— day of ——, 18—.

A. B.

Countersigned by C. D.,
Officer of Excise.

GAMEKEEPER'S LICENCE TO KILL GAME.

No. ——
GREAT BRITAIN.
£2 0 0

— Collection.
— District.

10. Game-keeper's li-
cence to kill
game (pro-
vided by In-
land Reve-
nue).

I ——, of ——, being duly authorized by the Commissioners of Inland Revenue to grant licences for killing game, under the authority and in pursuance of an act passed in the twenty-fourth year of the reign of her Majesty Queen Victoria, intituled "An Act to repeal the Duties on Game Certificates and Certificates to deal in Game, and to impose in lieu thereof Duties on Excise Licences and Certificates for the like purposes," do hereby authorize and empower ——, of ——, in the county of ——, to KILL GAME, he having been deputed or appointed to act as gamekeeper by ——, of ——, in the county of ——, and having paid the sum of two pounds for this licence. This licence expires on the fifth day of April, one thousand eight hundred and sixty—.

Dated and signed this —— day of ——, 18—.

A. B.

Countersigned by C. D.,
Officer of Excise.

I hereby certify that this licence is transferred to E. F., gamekeeper of G.

Dated this —— day of ——, 18—.

(Signed) A. B., Collector or Supervisor.

11. Endorse-
ment on li-
cence on
change of
keeper (Id.
s. 8, *ante*,
p. 68).

³³ See note ³², *ante*, p. 78.

CHAPTER VI.

LANDLORD AND TENANT'S RIGHTS AND LIABILITIES WITH RESPECT TO GAME, &c. IN ENGLAND.

Excise licence to be taken out in all cases.

WHETHER the landlord or the tenant or occupier of the lands be entitled to the game, neither can use a dog, gun, &c., to take game, or conies, &c. (with some few exceptions), without first obtaining an excise licence to kill game under the 23 & 24 Vict. c. 90, ss. 2, 5 (*ante*, pp. 60, 64), and neither can destroy hares or game by poison, or use firearms by night for killing them (1 & 2 Will. 4, c. 32, s. 3; and 11 & 12 Vict. c. 29, s. 5). The former is the proprietary right ; the latter the fiscal right.

Enactments as to landlord and tenant's rights.

The enactments which now contain the law as to the relative proprietary rights of landlord and tenant or occupier, with respect to the game upon the lands, are contained in the 1 & 2 Will. 4, c. 32, ss. 7 to 12, as to game, excepting hares, and the 11 & 12 Vict. c. 29, as to hares.

1 & 2 Will. 4, c. 32.

Under existing leases the landlord shall have the game, except in certain cases.

Sect. 7.

1 & 2 Will. 4, c. 32, s. 7, enacts,—“That in all cases where any person shall occupy any land under any lease or agreement made *previously* to the passing of this act [5th October, 1831], except in the cases hereinafter next excepted, the lessor or landlord shall have the right of entering upon such land, or of authorizing any other person or persons who shall have obtained an annual game certificate to enter upon such land for the purpose of killing or taking the *game* thereon ;¹

¹ This refers only to “game” as defined by s. 2, *ante*, p. 46 ; and, therefore, the landlord and occupier's rights in

“And no person occupying any land under any lease or agreement, either for life or for years, made previously to the passing of this act, shall have the right to kill or take the game on such land, except where the right of killing the game upon such land has been expressly granted or allowed to such person by such lease or agreement, or except where upon the original granting or renewal of such lease or agreement a fine or fines shall have been taken, or except where in the case of a term for years such lease or agreement shall have been made for a term exceeding twenty-one years.”²

respect of woodcocks, snipes, quails, landrails and conies, remain the same as before, i.e., the tenant has the right, unless they are expressly reserved to the landlord. See 11 & 12 Vict. c. 29, *post*, p. 88, as to hares, which preserves the same position of the parties; and see s. 30, *post*, Chap. VII., as to trespasses without the tenant's leave. The right of shooting is an incorporeal hereditament, and, consequently, if granted over, it can only pass by deed under seal (*Bird v. Higginson*, 2 Ad. & El. 696; 6 Ad. & El. 824; and see further cases, Paterson, G. L., 15, 16). See a form of agreement letting the right of sporting, No. 14, *post*, p. 93.

³ It should be observed, that before the 1 & 2 Will. 4, c. 32, the tenant had, by the common law, the exclusive right to the game on his land and to kill it, except it was reserved to the landlord; and sometimes there was a concurrent right in both. The effect of the several sections, and the result, may be thus stated:—The 7th section transfers this right of sporting under leases or agreements, made before the 5th of October, 1831, from the tenant to the landlord, except in the three cases named above wherein it will belong to the tenant.

The 8th section does not mention what the rule is to be as to leases made subsequent to October, 1831, but it provides, that nothing in this act shall authorize the tenant to sport, or to authorize others to sport, where the right of entry for the purpose of killing the game is in the landlord, by virtue of any grant, lease or contract, then or thereafter reserved or retained. The general result of these two sections is, that *prima facie* the tenant is entitled to the game, unless the lease, &c., expressly takes it from him (Paterson, G. L. 14). In Locke's G. L., 4th ed., pp. 108, 109, the editor thus proceeds:—

“The result of these provisions is that (1) upon land held under lease or agreement, made before 5th October, 1831 Leases before c. 32.

1 & 2 Will. 4,
c. 32.

This act not
to affect any
existing or
future agree-
ments re-
specting
game, nor
any rights
of manor,
forest, chase,
or warren;

Sect. 8.

nor reserva-
tions, &c. in
private acts.

Sect. 8 enacts,—“That nothing in this act contained shall authorize any person seized or possessed of or holding any land to kill or take the game, or to permit any other person to kill or take the *game*, upon such land, in any case where, by any deed, grant, lease or any written or parol demise or contract, a right of entry upon such land for the purpose of killing or taking the game hath been or hereafter shall be reserved or retained by or given or allowed to any grantor, lessor, landlord or other person whatsoever;

“Nor shall anything in this act contained defeat or diminish any reservation, exception, covenant or agreement, already contained in any private act of parliament, deed or other writing, relating to the game upon any land, nor in any manner prejudice

Leases after
1 & 2 Will. 4,
c. 32.

(except in the three excepted cases named in sect. 7), the landlord may sport or authorize others to sport, while the tenant, if he do either, subjects himself to a penalty not exceeding 2*l.* for the sporting, and 1*l.* per head for the game killed (s. 12). (2) In the first excepted case, viz., where the right of killing the game was, by the lease or agreement, expressly given to the tenant; the relative rights of landlord and tenant appear to be unaltered by the act, except, indeed, upon the supposition that such lease or agreement expressed that both landlord and tenant should have the right of killing the game, for there the 11th sect., which provides that the landlord, who has by reservation the right to kill the game, may authorize others to do so; and the 30th sect., which provides, that where the landlord has the right to kill the game, the tenant's licence shall be no defence to a trespasser under that section, may materially affect those rights. (3) In the 2nd and 3rd excepted cases, viz., where a fine was paid at the grant or renewal of the lease, and where the term granted exceeded twenty-one years, and in all leases made after 5th October, 1831, the relative right of landlord and tenant appears to be unaltered, except in the following respects: first, that when the landlord has the exclusive right of sporting, he has, under the 12th sect., a new and summary remedy against the tenant who sports, or authorizes others to sport. Secondly, when the landlord has by reservation the right of killing the game, he may, under sect. 11, authorize others to do so; while, thirdly, the tenant's licence would in such case be no defence to a person prosecuted by the landlord, for a trespass in pursuit of game under sect. 30.”

the rights of any lord or owner of any forest, chase ^{1 & 2 Will. 4,}
or warren, or of any lord of any manor, lordship or
royalty, or reputed manor, lordship or royalty, or
of any steward of the crown of any manor, lordship
or royalty appertaining to his majesty.”³

Sect. 11 enacts,—“That where the lessor or ^{Landlord} having the
landlord shall have reserved to himself the right game may
of killing the game upon any land, it shall be authorize
lawful for him to authorize any other person or it.
persons who shall have obtained an annual game
certificate [now an excise ‘licence to kill game,’ ^{Sect. 11.}
^{23 & 24 Vict. c. 90, s. 6, ante, p. 67]} to enter
upon such land for the purpose of pursuing and
killing game thereon.”⁴

Sect. 12 enacts,—“That where the right of kill-

Where the
landlord, &c.
has the right
to the game,
in exclusion
of the occu-
pier, the occu-
pier shall
be liable to a
penalty for
killing it.

³ An exception in a deed of the liberty of hawking and hunting does not authorize the shooting of feathered game with a gun (*Moore v. Earl of Plymouth*, 7 Taunt. 614; 1 Moore, 346; 3 B. & Ad. 66). A liberty of hawking, hunting, fishing and fowling, reserved to B. and C. under a deed, by which A. and B. conveyed lands to D., is not an exception or reservation, but a new grant by deed, and therefore enures in favour of C. and his heirs, although he was not a party to the deed; such a liberty is a grant of a licence of profit, and not a mere personal licence of pleasure, and therefore authorizes the grantor and his assigns to hawk by their servants, &c., in their absence (*Wickham v. Hawker*, 7 Mee. & W. 63; *Dayrell v. Hoare and others*, 12 Ad. & El. 356). See further cases under s. 10, *post*, p. 80; and as to her Majesty’s forests, &c., see s. 9, and note thereto, p. 85.

⁴ *Vide* the notes to s. 7, *supra*. A similar privilege is not given to the tenant. See note ⁵ to s. 12, p. 84. The authority referred to should be obtained before the acting upon it, in order to save the trespass penalty (*Morden v. Porter*, 29 L. J. (N. S.), M. C. 226; 7 C. B. (N. S.) 641; 1 Law T., N. S. 403; 25 J. P. 263). For the forms of permission to sport to a licensed person by owner or occupier, and of an agreement letting the right of sporting, see Nos. 12, 13, 14, *post*, pp. 92, 93.

1 & 2 Will. 4., by or granted to, or doth or shall belong to, the
 c. 32. lessor, landlord or any person whatsoever, other
 Sect. 12. than the occupier of such land,—then and in every
 such case, if the occupier of such land shall pursue,
 kill or take any game upon such land,—or shall
 give permission to any other person so to do,—
 without the authority of the lessor, landlord or other
 person, having the right of killing the game upon
 such land,⁵ such occupier shall, on conviction

⁵ Game only, as defined by 1 & 2 Will. 4, c. 32, s. 2, *ante*, p. 46, note, is here also referred to ; but by s. 30, (Chap. VII.,) as to trespasses, it is provided that, where the landlord has the right of killing the "game," the leave and licence of the occupier is no defence to a person prosecuted under it by the landlord for a trespass in pursuit of game, or *woodcocks, snipes, quails, landrails or conies*, so that, although the tenant may himself lawfully kill these animals, a stranger (not a servant of the tenant) acting on the tenant's leave will be liable to the penalty of 2*l.* imposed by that section (Locke, G. L., 4th edit. p. 109); but he will not be liable to the excise penalty under 23 & 24 Vict. c. 90, if he is trespassing in search of rabbits by the "direction or permission" of the tenant. As to woodcocks and snipes the tenant may kill them with "nets or springs. See s. 5, *ante*, p. 64. Where the "game" only is transferred by the 7th section, *ante*, p. 80, from the tenant to the landlord, the woodcocks, snipes, quails, landrails and conies are not also transferred ; and therefore the tenant himself has the right of killing and taking them. Some recent cases bear upon this point, and as to the tenant's right to authorize others to take these privileged animals. In *Spicer v. Barnard*, 28 L. J. (N. S.) M. C. 176; 33 Law T. 121; 23 J. P. 311, the Court of Queen's Bench decided that the occupier, whose demise reserved game to the landlord, which therefore did not include conies, could not only kill rabbits with his own hands, but could send a ratcatcher or his son and visitors to take them for his own use ; that it was not a mere personal privilege, but was capable of being discharged by deputy, and protected all servants *bonâ fide* employed for the purpose. Of course, woodcocks, snipes, quails and landrails are for the purposes of this enactment in the same category as rabbits. *Padwick v. King* (29 L. J. (N. S.) M. C. 42; 1 Law T., N. S. 98; 23 J. P. 776) also decided that the tenant in a similar case, who occupied land under a lease, which reserved to the landlord the right of sporting over the land, and also gave the tenant the right of sporting over it, having the right to kill rabbits, had a right to employ a person to do so for him ;

thereof before two justices of the peace, forfeit ^{1 & 2 Will. 4,}
^{c. 32.} and pay for such pursuit such sum of money not exceeding two pounds, and for every head of game so killed or taken such sum of money not exceeding one pound, as to the convicting justices shall seem meet, together with the costs of the conviction."⁶

Sect. 9 enacts,—“That nothing in this act contained shall in any way alter or affect the prerogative, rights or privileges of his majesty, his heirs or successors, nor the powers or authorities now vested in the commissioners of his majesty's woods, forests and land revenues, in or relating to any of his majesty's forests or the boundaries thereof, nor in or relating to the appointment of any stewards, game-keepers or other officers of any of his majesty's forests, parks or chases, or of any hundred, honor, manor or lordship, being part of the possessions and land revenues of the crown, nor the rights, privileges or immunities of any chief justice in eyre, or any warden, deputy warden, or lieutenant of any of his majesty's forests, or any rangers, verderers, foresters, master-keepers, under-keepers, or other officers of or in any such forests, parks or chases, or of any person entitled to any right or privilege under them or any of them,—nor the rights or privileges of any persons holding under any grants or purchases from the crown,”⁷—nor give

This act not
to affect any
of his ma-
jesty's forest
rights, &c.

Sect. 9.

Nor give ad-
ditional
rights to
lords, &c.

and that this was different from a tenant authorizing a stranger to sport over the land. See also *Morden v. Porter*, in note ⁴, *ante*, p. 83.

⁶ *Vide* Chap. XII., *post*, for the mode of recovery of all penalties under the 1 & 2 Will. 4, c. 32; and forms Nos. 15, 16, *post*, p. 95, for the mode of describing the offences of the occupier here enacted.

⁷ The 10 Geo. 4, c. 50, relates to the forests, chases, woods 10 Geo. 4,
 and parks of the crown, which were, amongst other property, c. 50.
 by it placed under the management of the commissioners of
 woods and forests, s. 14 of which relates to the appointment
 of stewards of the manors, &c., who may appoint others to
 preserve the game, deer, beasts, birds, fish, &c.; and who, by
 2 & 3 Will. 4, c. 113, c. 9, were exempt from the game cer-
 tificate duty, and now by 23 & 24 Vict. c. 90, s. 5 (exemption

1 & 2 Will. 4, to any lord of any manor or manors within any forest or the boundaries thereof, nor to any other person whatsoever, any privileges, rights or powers within any such forest, park or chase, or the boundaries thereof, which he did not possess or to which he was not entitled before the passing of this act,—but that all the aforesaid prerogatives, immunities, privileges, rights and powers shall remain as if this act had not been made.” (See also s. 10, *infra*.)

Not to affect
any cattle-
gates or right
of common.

Sect. 10.

Sect. 10 enacts,—“That nothing herein contained shall be deemed to give to any owner of cattle-gates or rights of common upon or over any wastes or commons any interest or privilege which such owner was not possessed of before the passing of this act,—nor to authorize such owner of cattle-gates or rights of common to pursue or kill the game found on such wastes or commons;”—and that nothing herein contained shall defeat or diminish the rights or privileges which any lord of any manor, lordship or royalty, or reputed manor, lordship or royalty, or any steward of the crown of any manor, lordship or royalty appertaining to his majesty, may, before the passing of this act, have exercised in or over such wastes or commons;”—and that the lord or

2, *ante*, p. 65), from taking out an excise licence to kill game. As respects the Forest of Dean, see 6 & 7 Will. 4, c. 3; 1 & 2 Vict. c. 42, s. 14, and 24 & 25 Vict. c. 40, s. 25. Trespassers in her Majesty's forests, &c., may be apprehended by the warden, ranger, &c., under 1 & 2 Will. 4, c. 32, ss. 31, 36, and the game taken from them, and are punishable under s. 33, Chap. VII., *post*.

* The owners of cattle-gates are not in possession of the soil, and the ownership of the soil remains in the lord of the manor, subject to the right of pasture upon it by the cattle-gate owner (*Cooper v. Marshall*, 1 Burr. 259; 2 Wils. 252); and the lord of the manor has the right of sporting and of the game, and may maintain an action of trespass against the cattle-gate owner for sporting on the land (*Earl of Lonsdale v. Rigg*, 26 L. J. (N. S.) Exch. 196; 28 Law T. 372; 21 J. P. 228; 1 H. & N. 923, in error). See note ^a, *infra*.

^a The lord may kill the game on the wastes and commons of the manor, and may therefore exclude the commoners from taking it there (*Christian, G. L.* 39); this section merely

steward of the crown of every manor, lordship or royalty, or reputed manor, lordship or royalty, shall have the right to pursue and kill the game upon the wastes or commons within such manor, lordship or royalty, or reputed manor, lordship or royalty, and to authorize any other person or persons who shall have obtained an annual game certificate to enter upon such wastes or commons for the purpose of pursuing and killing the game thereon.”

The killing of, or coursing or hunting, hares (which are included in the term “game”) by the owner or occupier of lands, having the right of killing game thereon, is authorized by 11 & 12 Vict. c. 29, and exempted from the government

Lord of
manor to
have the
game on the
wastes.

confirming that which was previously the law, the tenants having nothing more than a right to eat the herbage by the mouths of their cattle (*Greathead v. Morley*, 3 M. & G. 139; 10 L. J., C. P. 246). The lord of a manor who has an allotment under an Inclosure Act in lieu of his rights of soil, with a reservation of rights of sporting, has an *exclusive* right of sporting over the land inclosed, because that was the character of the right before the statute 1 & 2 Will. 4, c. 32. See *Graham, Bart., v. Ewart*, 26 L. J. (N. S.) Exch. 97; 28 Law T. 174; 21 J. P. 150; *Ewart v. Graham, Bart.*, 7 H. of L. Cas. 331; 23 J. P. 483. See also *Bruce v. Helliwell*, 29 L. J. (N. S.) Exch. 297; 5 H. & N. 609; 2 Law T., N. S. 292, which held that the copyholders had the right of sporting, the case being distinguished from *Graham v. Ewart*, as in this case there was no right of free warren or chase within the manor, as to which see p. 41, Chap. II. See also the provisions of 8 & 9 Vict. c. 118, ss. 105, 106; 12 & 13 Vict. c. 83, s. 7; and 17 & 18 Vict. c. 97, s. 8, as to lord's rights on extinguishment of rights of common, and on partitions and exchanges under the Inclosure Acts. It appears, also, that as respects enfranchised copyholds the lord's rights of chase and warren, or other rights to hunt, shoot, fish and fowl over them, is preserved by 4 & 5 Vict. c. 35, s. 82, and 15 & 16 Vict. c. 51, s. 48 (Woolrych, G. L. 104). A lord may be sued in an action as a trespasser for sporting over lands not in his own occupation (see *Pickering v. Noyes*, 4 B. & C. 648; 7 Dowl. & R. 49; *Brown v. Taylor*, 10 East, 189); but he is exempt from the provisions of 1 & 2 Will. 4, c. 32, s. 30, relating to the summary punishment of trespassers, and in fact is by that section “deemed to be the legal occupier of the land of the wastes or commons” of the manor.

1 & 2 WILL. 4, duty for the licence to kill game by 23 & 24 Vict. c. 32. c. 90, s. 5, exception and exemption 4, *ante*, pp. 65, 66.

11 & 12 Vict. c. 29.¹⁰ The 11 & 12 Vict. c. 29,¹⁰ after reciting that by 48 Geo. 3, c. 55, 52 Geo. 3, c. 93, and 3 & 4 Vict. c. 17 [now repealed], “certain duties of assessed taxes were granted to her majesty the Queen upon, amongst other things, every person who shall use any dog, gun, net or other engine, for the purpose of taking or killing any game whatever, or shall assist in any manner in the taking or killing of any game;” and that “by divers laws now in force penalties are imposed on all persons taking or killing, or assisting in the taking or killing of, amongst other things, any game whatever, who shall not have obtained a certificate of the due payment of such duties;” and that “it has been found that much damage has been and is continually done by hares to the produce of inclosed lands, and that great losses have thereby accrued and do accrue to the occupiers of such lands;” and that “it is expedient that persons in the actual occupation of such inclosed lands, or the owners thereof, who have the right of killing game thereon, should be allowed to take, kill and destroy hares thereon, without the payment of the said duties of assessed taxes, and without the incurring of any of the penalties above mentioned;” by sect. 1 enacts,—“That from and after the passing of this act it shall be lawful for any person, being in the actual occupation of any inclosed lands,¹¹—or for any owner thereof who has the

Persons in
the occupa-
tion of in-
closed
ground, and
in certain

¹⁰ Intituled “An Act to enable Persons having a Right to kill Hares in England and Wales to do so, by themselves or Persons authorized by them, without being required to take out a Game Certificate.” (Passed 22nd July, 1848.)

¹¹ See however, sect. 6, pp. 91, 92, as to agreements reserving game to the landlord, which are still to be in force, for this section does not in any way affect the right as between landlord and tenant of killing and taking the game, including the hares. The occupier may be an under-tenant or servant rent free, even, if in actual occupation of the land (*Ass. Taxes, Appeal Case, No. 2392 (1855)*).

right of killing game thereon,—by himself or by ^{11 & 12 Vict.}
any person directed or authorized by him in writing,
according to the form in the schedule to this act
annexed,¹² or to the like effect, so to do, to take,
kill or destroy any hare then being in or upon any
such inclosed lands, without the payment of any
such duties of assessed taxes as aforesaid, and with-
out the obtaining of an annual game certificate”
[now an excise “ licence to kill game,” 23 & 24
Vict. c. 90, s. 6, *ante*, p. 67].¹³

Sect. 2 enacts,—“That no owner or occupier of land as aforesaid shall be authorized to grant or continue, under the provisions of this act, authority to more than one person, at one and the same time, to kill hares upon his land within any one parish—[which is, by s. 7, to include ‘any hamlet, township, tithing, or extra-parochial place,’];—and that he shall deliver the said authority, or a copy thereof, or cause the same to be delivered, to the clerk of the magistrates acting for the petty sessions division within which the said lands are situate, who shall forthwith register the same, and the date of such registration, in a book to be kept by him for such purpose, which book shall be at all reasonable times open to the inspection of the clerk of the commissioners acting in the execution of the acts for assessed taxes, or of any of the collectors of assessed taxes

¹² See the form referred to, *post*, p. 95, No. 17.

¹³ There is no concurrent right, as has been supposed, in both the owner and occupier to kill or authorize another person to kill hares on the same lands; and therefore two persons cannot register under separate characters. For instance, where the landlord reserved the game, but omitted to introduce a covenant that his tenant should not take the game; the tenant had registered, and the appellant claimed under him as servant; the judges confirmed the surveyor's charge of duty on the servant on the ground that there was not a concurrent right (*Ass Taxes, Appeal Case, No. 2347 (1854); Woolrych, G. L. 69*). For the same reason, the person duly authorized by either owner or occupier cannot exercise the right concurrently with the owner or occupier so authorizing him.

11 & 12 Vict. c. 29. within such district;¹⁴—and the said authority, so soon as it shall have been registered as aforesaid, shall be held good until after the first day of February in the year following that within which the same is granted unless the same be previously revoked, and notice of such revocation be given to the clerk of the magistrates as aforesaid;¹⁵—and the said registered authority, or the unrevoked register thereof, shall be good and sufficient evidence of the right of the person to whom authority is given by the same to kill hares upon the lands mentioned within the same without having obtained an annual game certificate” [now an excise “licence to kill game,” 23 & 24 Vict. c. 90, s. 6, *ante*, p. 67].¹⁶

If authority revoked, notice to be given of the same.

Persons not to be liable to tax on gamekeepers.

Sect. 3.

To extend to coursing or hunting.

Sect. 4.

Sect. 3 enacts,—“That no person so directed or authorized to kill any hare as aforesaid shall, unless otherwise chargeable, be liable to any duties of assessed taxes as gamekeeper.”

Sect. 4 enacts,—“That from and after the passing of this act it shall be lawful for any person to pursue and kill, or to join in the pursuit and killing of, any hare by coursing with greyhounds, or by hunting with beagles or other hounds, without having obtained an annual game certificate” [now an excise “licence to kill game,” 23 & 24 Vict. c. 90, s. 6, *ante*, p. 67].¹⁷

¹⁴ Only one person at a time can hold such authority under this enactment. A form of this book is given in Oke's “Magisterial Formulist,” 3rd ed. p. 690.

¹⁵ *Vide* form of notice of revocation, No. 18, *post*, p. 96.

¹⁶ It is recommended that the authority be given in duplicate, and one kept by the magistrate's clerk, the other by the person authorized to kill hares, with a certificate of the clerk thereon of its having been registered;—or probably a copy only will be sufficient for the clerk if he has the opportunity to compare it with the original. See Form No. 17, *post*, p. 95.

¹⁷ The same exemption is preserved in 23 & 24 Vict. c. 90, s. 5, exception 3 and exemption 4, *ante*, pp. 64, 66. Before this act of 11 & 12 Vict. c. 29, any person who joined a pack of harriers, or went out coursing, not having obtained

Sect. 5 enacts,—“That nothing herein contained shall extend or be taken or construed to extend to the making it lawful for any person, with intent to destroy or injure any hares or other game, to put or cause to be put any poison or poisonous ingredient on any ground, whether open or inclosed, where game usually resort, or in any highway,¹⁸—or for any person to use any fire-arms or gun of any description, by night, for the purpose of killing any game or hares.”¹⁹

Sect. 6 enacts,—“That where any tenant of any land for life or lives, years or otherwise, now is or

<sup>11 & 12 Vict.
c. 29.</sup>

<sup>Not to autho-
rize the lay-
ing of poison.</sup>

^{Sect. 5.}

<sup>or using fire-
arms by
night.</sup>

<sup>Agreements
reserving
game to be
still in force.</sup>

^{Sect. 6.}

a game certificate, was liable to be surcharged under the 52 Geo. 3, c. 93, and 54 Geo. 3, c. 141, unless the owner of the pack or some subscriber to it who held such certificate were present, but it is not so now (Ass. Taxes, App. Case, No. 2276). Where appellants were *beating for game*, and not merely assisting a certificated person who had two greyhounds and a spaniel; the greyhounds belonged to him, but the spaniel did not: it was held they were liable to the duty, on the ground probably of the active part they took (Id. No. 1388 in 1840). Where the parties are not authorized to course hares on the lands they are on, and have other dogs than those warranted by this section, they are also liable (Id. No. 2203); but not where they have another dog, a spaniel for instance, with those which are authorized to be used (Id. No. 2433). Of course the common law as to trespass is not affected by this act (see 1 & 2 Will. 4, c. 32, s. 35, *post*, Chap. VII.).

¹⁸ The laying of poison in these places with intent to kill game is punishable under 1 & 2 Will. 4, c. 32, s. 3, by a penalty not exceeding 10*l.*, and by the 26 & 27 Vict. c. 113, s. 3, the mere placing of poisoned grain, seed or meal on ground, or other exposed situation, is punishable in like manner. See Chap. IX.

¹⁹ This enactment imports a new restriction into the game laws, and clearly prohibits (without a specific penalty being attached) any person, whether licensed or not, when entitled to kill the game or hares, from doing so *by night* (Paterson, 149). Night is (by 11 & 12 Vict. c. 29, s. 7) to be considered and is thereby declared “to commence at the expiration of the first hour after sunset, and to conclude at the beginning of the last hour before sunrise,” which is the same definition as in the Night Poaching Act, 9 Geo. 4, c. 69, s. 12, Chap. XIII.

11 & 12 Vict. c. 29. hereafter shall be bound by any agreement [which, by s. 7, includes 'any covenant, proviso, promise, undertaking, condition, or reservation'] not to take, kill or destroy any game upon any lands included in such agreement, then and in all such cases nothing herein contained shall extend, or be taken or construed to extend, to authorize or empower such tenant to take, kill or destroy any hare upon any such lands so included in such agreement, or to authorize any other person to kill or destroy any hare upon any such lands.”²⁰

Sect. 6.



F O R M S.

12. Permission by owner or occupier to sport over lands.²¹

I, C. D., of ——, being the owner [or actual occupier] of the farm [*or lands*] called ——, situate in the parish of ——, in the county of —— [now in the occupation of E. F., *if an owner gives it*], and being entitled to and having by law the right of killing the game upon the same, do hereby give leave, licence and permission to A. B. of —— (when and during the period he shall be duly licensed to kill game, and the same may be lawfully killed or taken), to pursue, kill and take any game whatever upon the said farm [*or lands*], for his own use, either by hunting, coursing, shooting or sporting; and this permission shall continue from the day of the date hereof for the period of —— months.

Given under my hand and seal this —— day of ——, 1863.

C. D. (L.S.)

²⁰ See the notes to sect. 7 of 1 & 2 Will. 4, c. 32, *ante*, p. 80, as this act strictly preserves the right of killing game, including hares.

²¹ These should be under seal (see *Bird v. Higginson, ante*, p. 81, n.); but they may be given in evidence before justices, in cases of summary conviction, which are “criminal proceedings,” without a stamp (17 & 18 Vict. c. 83, s. 27); and so may an agreement or a lease of sporting, which should be entered into if the sporting is for a season or longer.

I, C. D., of ——, being the occupier and tenant of the 13. Direction farm and lands called ——, situate in, &c., and being as or permission by a tenant such entitled by law to the conies upon the same, do hereby to a person, give leave, licence and permission to E. F. of &c. (who holds a licence to kill game) to pursue, kill and take for my not his servant, to kill conies (23 & use any conies upon the said farm and lands for —— weeks 24 Vict. c. 90, from this date. s. 5, exception 2).²²

Given under my hand and seal this —— day of ——, 1863.

C. D. (L.S.)

Memorandum of Agreement made this —— day 14. Agree-
of August, 1863, between A. B. of &c. (here- ment letting
inaster called "lessor") of the one part and right of
C. D. of &c. (hereinafter called "hirer") of sporting over
the other part: lands.²³

Witnesseth, that the lessor hereby agrees to let, and the hirer hereby agrees to hire, for the term of one year [*or as the case may be*], from the 1st day of September now next ensuing, All that messuage, house and tenement, with the appurtenances, called ——, and situate at, &c., belonging to the lessor, and now in the occupation of ——; And also the right and liberty to hunt, hawk, fish, fowl and shoot, and to take, kill and destroy [winged] game and fish (to which the lessor is legally entitled), but excepting hares and rabbits [*or as the case may be*], in, over and upon the lands thereto adjoining and belonging.

[*or on a certain farm or farms called ——, situate in the several parishes of ——, and in the occupation of ——, respectively containing —— acres or thereabouts],*

[*or on the farms and lands particularly described in the schedule hereunder written],*

²² See note ²¹, *ante*, p. 92.

²³ The stamp would be the same as on a lease, viz. 6d., where the yearly rent is not exceeding 5*l.*; increasing 6d. for every 5*l.* up to not exceeding 25*l.*, and then 2*s.* 6d. every 25*l.* up to 100*l.*, which is 10*s.*; and if exceeding 100*l.*, then for every 50*l.* of rent or fraction thereof, 5*s.* (13 & 14 Vict. c. 97, Schedule "Lease"). A counterpart must bear the same stamp duty as the original if that do not amount to 5*s.*, but if that amounts to 5*s.* or upwards, then a duty of 5*s.* As this is an agreement under seal as required by law in these cases (*ante*, p. 81, n.), an agreement stamp, under 23 Vict. c. 15, will not suffice. The right of sporting may, of course, be by a formal lease instead of this short agreement, which is usually done where it is let for a longer period than a year.

at the rent of £——; one moiety to be paid on the 1st of March next, and the remaining moiety on the 1st of September, 1864,

[or if the term be more than a year, payable half-yearly, on the 1st of March and the 1st of September in every year during the said term]:

And the parties do hereby further agree as follows:²⁴—The hirer to pay the wages of the present gamekeeper of the lessor, with two assistants, and all other and usual expenses incurred by—for and in protecting the game, and also the rent aforesaid, without deduction. If the rent be not paid within twenty-eight days of the day named, this agreement to be void, and the term to cease from such day. The hirer to pay and keep indemnified the lessor, and the tenants and occupiers of the lands, from all costs, damages and expenses they may respectively be put unto by the sporting of the hirer and his servants, or in consequence thereof, as well as to repair and make good breaches done to the banks, hedges and fences of the lands occasioned thereby; and also to pay for any damage done to crops thereon by hares or rabbits (if above £____ in any one year, and notice thereof be given to him by the lessor), to be settled by arbitration in the usual way. The hirer, at the expiration of the said term, to leave a sufficient number of heads of game upon the said lands, not less than _____. The lessor, at the costs of the hirer, to give notice to persons not to trespass on the lands, and to suffer the names of himself and his tenants to be used in any proceedings against persons trespassing thereon; the hirer holding them harmless from damages and costs in relation to such proceedings.

The Schedule above referred to.

Parish.	Name of Farm.	Name of Tenant.	Quantity.
			A. R. P.

As witness the hands and seals of the said parties.

A. B. (L.S.)

C. D. (L.S.)

E. F.

²⁴ Any of these stipulations may be inserted according to circumstances, or adapted to the terms of hiring.

For that you [or he the said A. B.] on &c., at &c., then 15. Occupier being the occupier of a certain piece of land there situate, pursuing, killing or called —, and the right of killing the game upon such taking game land then being, by the statute in that case made and pro- when not en- vided, given to [the said] C. D., the landlord [or lessor] titled (1 & 2 thereof, in exclusion of the right of [you] the said A. B. as 32, s. 12).²⁵ the occupier of the said land,

[or if the offence be contrary to his lease, instead of “and the right, &c.” say, “the exclusive right of killing the game upon such land, then having been and being specially reserved by or granted to and then belonging to C. D., the lessor, or landlord, thereof.”]

unlawfully did* pursue and kill [or take] certain game, to wit, [two partridges], upon the said land, without the authority of the said C. D., your [or his] landlord as aforesaid, contrary, &c.

Proceed to the asterisk in the last form, and then:* give 16. Giving to one E. F. permission to pursue, kill and take game upon the said land without the authority of the said C. D., the person to do so (Id.)²⁶

I, A. B., do authorize C. D. to kill hares on my lands 17. Authority [or “the lands occupied by me,” as the case may be], within the — of — [here insert the name of the parish or other place, as the case may be].

Dated this — day of — [here insert the day, month and year].

(Witness)

A. B.

[The certificate of registration, mentioned in note¹⁶, ante, c. 11 & 12 Vict. p. 90, may be as follows :—

“Registered in pursuance of the statute 11 & 12 Vict. c. 29, this — day of —, 186—, by us, I. and B., clerks to the magistrates acting for the petty sessions division of N., within which the lands above mentioned are situate.”]

²⁵ These Statements of Offences are for insertion in the General Forms of Proceedings before Justices in Chap. XII., post.

18. Revocation of authority.
11 & 12 Vict. c. 29.

To Mr. C. D. and Messrs. I. and B., the clerks to the magistrates for the petty sessions division of N., within which the lands hereinafter mentioned are situate.

I, A. B., do hereby revoke the authority given by me to you the said C. D., authorizing you the said C. D. to kill hares on my lands [*or the lands occupied by me, as the case may be*], within the —— of —— [*as in the original authority*], bearing date the —— day of —— last, from the date hereof; and I do hereby give you, the said clerks to the magistrates, this notice of the said revocation, pursuant to the statute 11 & 12 Vict. c. 29.

Dated this —— day of ——, 186—.
(Witness)

A. B.



CHAPTER VII.

TRESPASSES IN PURSUIT OF GAME, &C. IN THE
DAY-TIME IN ENGLAND.

IT will be seen from the 1 & 2 Will. 4, c. 32, s. 6, ^{1 & 2 Will. 4,}
 and 23 & 24 Vict. c. 90, s. 18 (*ante*, p. 71), that ^{c. 32.}
 every person who has obtained an annual excise
 licence to kill game, is thereby authorized to kill
 and take game, &c., anywhere in the united king-
 dom, subject only to his liability to an action at
 law, or to the summary proceeding for the penalty
 under sect. 30 (*infra*, p. 98), for any trespass com-
 mitted by him in search or pursuit of it.

The 1 & 2 Will. 4, c. 32, s. 46, enacts,—“That nothing in this act contained shall prevent any person from proceeding by way of civil action to recover damages in respect of any trespass upon his land, whether committed in pursuit of game or otherwise,—save and except that where any proceedings shall have been *instituted* under the provisions of this act against any person for or in respect of any trespass, no action at law shall be maintainable for the same trespass by any person at whose instance or with whose concurrence or assent such proceedings shall have been instituted, but that such proceedings shall in such case be a bar to any such action, and may be given in evidence under the general issue.”¹

This act not
to preclude
actions for
trespass, but
no double
proceedings
for the same
trespass.

Sect 46.

¹ Vide *post*, p. 108, as to the action at law. If a summary remedy has been taken by a *stranger* under s. 30, p. 98, and without the concurrence or assent of the person entitled to give permission to sport, that will not bar this action. It is

1 & 2 Will. 4,
c. 32.

1. *By Proceedings before Justices*, infra.
2. *By Action at Common Law*, p. 108.

1. By proceedings before justices.

Penalty on persons trespassing in the day-time upon lands in search of game.

Sect. 30.

1. BY PROCEEDINGS BEFORE JUSTICES.

By 1 & 2 Will. 4, c. 32, s. 30, after reciting that, “after the commencement of this act, game will become an article which may be legally bought and sold, and it is therefore just and reasonable to provide some more summary means than now by law exists for protecting the same from trespassers,” enacts,—“That if any person whatsoever shall commit any trespass by entering or being in the day-time upon any land in search or pursuit of game, or woodcocks, snipes, quails, landrails or conies,² such persons shall, on conviction thereof before a justice of the peace, forfeit and pay such sum of money, not exceeding two pounds, as to the justice shall seem meet, together with the costs of the conviction;³

not necessary that there should be a conviction by the justices under s. 30 to bar such action,—an adjudication of dismissal of the information after hearing the case upon the merits will suffice (*Robinson v. Vaughan*, 8 Car. & P. 252). If, therefore, the proceedings before the justice have commenced by laying of the information, it is doubtful, should the informer wish, without giving any evidence, to withdraw it, whether the defendant can claim its dismissal, and whether such a dismissal would bar an action. Under the 11 & 12 Vict. c. 48, s. 14, a defendant is not entitled to an order or certificate of dismissal, which has the effect of barring further proceedings, unless the case has been heard upon the merits (*Oke's "Synopsis,"* 8th ed. p. 133, note²⁷).

Sect. 34.

² The “day-time” is defined by s. 34, for the purposes of the act, to “commence at the beginning of the last hour before sunrise, and to conclude at the expiration of the first hour after sunset,” at which period the “night,” as defined by the Night Poaching Act, 9 Geo. 4, c. 69, s. 12, commences; and it concludes at the exact period the day-time commences. The definition of game is at p. 46. See note⁴, p. 99, What is a trespass.

³ The penalty attaches to each separate land or occupation trespassed upon, each occupier being thereby aggrieved (*Bell, G. L.* 104, and see further note³, s. 23, *post*, Chap.

“ And that if any persons to the number of five 1 & 2 Will. 4, or more together shall commit any trespass, by entering or being in the day-time upon any land in search or pursuit of game, or woodcocks, snipes, quails, landrails or coones, each of such persons shall, on conviction thereof before a justice of the peace, forfeit and pay such sum of money not exceeding five pounds, as to the said justice shall seem meet, together with the costs of the conviction ;³

c. 32.
Penalty on
five or more
trespassing.

“ Provided always, that any person charged with any such trespass shall be at liberty to prove by way of defence any matter which would have been a defence to an action at law for such trespass ;⁴

VIII.). *Vide Chap. XII., post*, for the mode of recovery of this penalty ; and see note⁵, p. 101, as to who may prosecute ; and Nos. 19, 20, pp. 106, 107, forms of statements of the offences in justices' proceedings.

³ See note ³, *ante*, p. 98.

⁴ *What is a trespass.*] The words “enter and be,” if used, constitute only one offence under this enactment (*Reg. v. Mellor*, 2 Dowl. P. C. 173) ; and it appears that although, by the old cases, a constructive entry was held sufficient, it will not now suffice to warrant a conviction, for it must be a personal trespass to satisfy this penal enactment (*Reg. v. Pratt*, 4 E. & B. 860 ; 24 L. J. (N. S.) M. C. 113, 19 J. P. 578 ; confirmed by *Mayhew v. Wardley*, 8 Law T. (N. S.) 604). Where a shot was fired on the land, the party standing outside, the offence is committed in the place in which the offender stands, and not where the object he shoots at is (*Rez v. Alsopp*, 1 Show. 339 ; *Mayhew v. Wardley*, *supra*) ; but where there are several and some are in a field, and others stand on the outside and give the alarm, all are equally guilty of entering (*Passey's Case*, 7 C. & P. 282 ; *Reg. v. Whittaker*, 17 L. J. (N. S.) M. C. 127 ; 2 C. & K. 634 ; and other cases under Chap. XIII., “Poaching by Night”); or they might be charged as aiders and abettors under 11 & 12 Vict. c. 43, s. 5, in Chap. XII., by which they are made liable to the same punishment as the principal offenders. In *Osbond v. Meadows*, 31 L. J. (N. S.) M. C. 238 ; 6 Law T. (N. S.) 290 ; 26 J. P. 489 ; where a person in his own land shot a pheasant in the land of another, and went on such land to pick the bird up, it was held he committed a trespass of entering and being on land in pursuit of game within sect. 30, the shooting and picking up the bird being one transaction, or rather the pick-

1 & 2 WILL. 4, c. 32.
Where the occupier of

shooting on roads.

Claim of right or title.

ing up relating back to the shot, the pursuit commencing with the shot and being continued until it was consummated by the picking up of the bird. But the judges reserved the question whether the case is within the act where the game is lying dead on the land, and a person enters to take it, for it may be that an innocent person may do so, or that one man shoots and his accomplice comes by and takes up the bird. When it is a larceny to take dead game, see *ante*, Chap. I., p. 36. In regard to offences on roads, whether parish highway or under the management of turnpike trustees, a person who uses such roads otherwise than as a right of passage and for the purposes mentioned in this section is liable to the penalty as a trespasser; for the soil and freehold of the highway or turnpike road is in the owner of the adjoining land; and it may be described as land in the possession and occupation of such owner. See *Reg. v. Pratt*, 24 L. J. (N. S.) M. C. 113; 19 J. P. 578; *Davison v. Gill*, 1 East, 69. When a *bond fide* claim of right to enter the land for the purpose, as for instance under an authority given by a person who claimed to be the owner, is set up before the justices, their jurisdiction is ousted, as in other cases of right or title asserted before them (*Reg. v. Cridland*, 7 L. & B. 853; 27 L. J. (N. S.) M. C. 28; 29 Law T. 210; 21 J. P. 404), unless the defendant require them to determine the offence founded on the claim, or submit objections for the justices' decision, and claim their judgment on them in his favour (*Reg. v. Justices of Salop*, 29 L. J. (N. S.) M. C. 39; 24 J. P. 229; *Legg v. Pardoe*, 30 L. J. (N. S.) M. C. 108; 3 Law T. (N. S.) 371; 25 J. P. 39). But there must be evidence of some reasonable foundation for the claim or right; an honest belief without that foundation cannot oust their jurisdiction; and the right or title must be made on behalf of the defendant, or of those under whom he claims to act, not by disputing the title of the prosecutor, the lord of the manor or other person; and it should be such as, if true, would be a defence to an action. The justices may determine whether or not such claim is made *bond fide*, and their determination thereon is subject to review by the superior court on an appeal made under 20 & 21 Vict. c. 48. (See *Leatt v. Vine*, 30 L. J. (N. S.) M. C. 207; 8 Law T. (N. S.) 581; 25 J. P. 791; 27 J. P. 487; *Cornwell v. Sanders*, 32 L. J. (N. S.) M. C. 6; 7 Law T. (N. S.) 356; 27 J. P. 148; 26 J. P. 770; *Reg. v. Peak*, 8 Law T. (N. S.) 536). The Court of C. P. has decided, that, although a defendant acts under the impression that he had leave to sport from another, and therefore was unconscious of committing a trespass, he

not be a sufficient defence in any case where the 1 & 2 Will. 4,
landlord, lessor or other person shall have the right c. 32.
of killing the *game* upon such land by virtue of any
reservation or otherwise, as hereinbefore mentioned;
but such landlord, lessor or other person shall, for
the purpose of prosecuting for each of the two
offences herein last before mentioned, be deemed to
be the legal occupier of such land, whenever the
actual occupier thereof shall have given such leave
or licence;⁵

“And that the lord or steward of the crown of
any manor, lordship or royalty, or reputed manor,
lordship or royalty, shall be deemed to be the legal
occupier of the land of the wastes or commons
within such manor, lordship or royalty, or reputed
manor, lordship, or royalty.”⁶

[By 23 & 24 Vict. c. 90, s. 11, *ante*, p. 71, the Game licence
excise “licence to kill game” will be void on con- void on con-
viction under s. 30, *supra*; but, of course, another viction for
licence may be applied for and granted; this new trespass.

was liable to conviction, proof of the *mens rea* not being necessary (*Morden v. Porter*, 7 Com. B. Rep. 641; 29 L. J. (N. S.) M. C. 226; 1 Law T. (N. S.) 403; 25 J. P. 263).

⁵ *Vide* s. 12, *ante*, p. 83, and note⁴, and s. 7, and the cases thereon, as to the relative rights of the landlord and tenant to the game, as well as to woodcocks, snipes, quails, land-rails or conies. As to coursing hares, see now *ante*, p. 90. The onus of proving a licence, consent or authority falls on the party prosecuted (1 & 2 Will. 4, c. 32, s. 42, in Chap. XII.), who must also show that the party giving such licence is qualified to give it (*Clark v. Broughton*, 3 Campb. 328), and the leave must precede the act complained of (*Morden v. Porter, supra*). The information under this section may be laid by any person [see the mode in Chap. XII., *post*], even by a gamekeeper, or a person having no interest in the land trespassed upon; and it is not necessary that this should be done by the owner or occupier, or by their authority (*Morden v. Porter*, 29 L. J. (N. S.) M. C. 226; 1 Law T. (N. S.) 403; 25 J. P. 263, affirming *Middleton v. Gale*, 8 Ad. & El. 155; 3 Nev. & P. 372, to the same effect).

⁶ See s. 10, *ante*, p. 86, as to the rights of lords of manors, &c.

^{1 & 2 Will. 4,} licensed trespasser, varying with the period his c. 32. licence has to run. But if the person should kill game, &c., after the conviction, without then having a licence in force, he would be liable to the penalty under 23 & 24 Vict. c. 90, s. 4, *ante*, p. 62, on proof of such conviction, under 1 & 2 Will. 4, c. 32, s. 30.]⁷

Trespassers in search of game may be required to quit the land and to tell their names and abodes, and in case of refusal may be arrested.

**Ante*, p. 80, &c.

Sect. 31.

Sect. 31 enacts,—“That where any person shall be found on any land,—or upon any of his majesty’s forests, parks, chases or warrens,—in the day-time, in search or pursuit of game, or woodcocks, snipes, quails, landrails or conies, it shall be lawful for any person *having the right of killing the game*⁸ upon such land, by virtue of any reservation or otherwise as hereinbefore mentioned,* or for the occupier of the land (whether there shall or shall not be any such right by reservation or otherwise),—or for any gamekeeper or servant of either of them,—or for any person authorized by either of them,—or for the warden, ranger, verderer, forester, master-keeper, under-keeper or other officer of such forest, park, chase or warren,—to require the person so found forthwith to quit the land whereon he shall be so found, and also to tell his christian name, surname and place of abode;

“And in case such person shall, after being so required, offend by refusing to tell his real name or place of abode,—or by giving such a general description of his place of abode as shall be illusory for the purpose of discovery,—or by wilfully continuing or returning upon the land,—it shall be lawful for the party so requiring as aforesaid, and also for any person acting by his order and in his

⁷ The strict legal proof of a previous summary conviction before justices, as the statute does not allow of any other, is either the conviction itself produced from the office of the clerk of the peace, or an examined or certified copy of it when filed, coupled with evidence of the identity of the offender (Oke’s “Synopsis,” 8th ed., p. 136).

⁸ These words, “*having the right of killing the game*,” are wide enough to include the hirer and renter of the shootings, and to exclude the landlord.

aid, to apprehend such offender, and to convey him, 1 & 2 Will. 4, c. 32.
or cause him to be conveyed as soon as conveniently
may be, before a justice of the peace;⁹

“ And such offender (whether so apprehended or Penalty.
not), upon being convicted of any such offence
before a justice of the peace, shall forfeit and pay
such sum of money, not exceeding five pounds, as
to the convicting justice shall seem meet, together
with the costs of the conviction;¹⁰

“ Provided always, that no person so appre-
hended shall, on any pretence whatsoever, be de-
tained for a longer period than twelve hours from
the time of his apprehension until he shall be
brought before some justice of the peace;—and that
if he cannot on account of the absence or distance
of the residence of any such justice of the peace, or
owing to any other reasonable cause,¹¹ be brought
before a justice of the peace within such twelve
hours as aforesaid, then the person so apprehended
shall be discharged, but may nevertheless be pro-
ceeded against for his offence by summons or
warrant, according to the provisions hereinafter
mentioned, as if no such apprehension had taken
place.”

Sect. 32 enacts,—“ That where any persons, to
the number of five or more together, shall be found
on any land,—or in any of his majesty’s forests,
parks, chases or warrens,—in the day-time, in search

Party arrest-
ed must be
discharged
unless
brought be-
fore a justice
within twelve
hours.

Penalty on
five or more
persons
found armed,
using vio-
lence, &c.

Sect. 32.

⁹ A constable should not act under this section unless duly authorized and he be aiding the authorized persons named who are also present. A person cannot be legally apprehended unless he have been first required to quit the land *as well as* to tell his name, and, at all events, the “wilfully continuing or returning upon the land,” must be upon the *same* land, and for the purpose of pursuing game there (*R. v. Long*, 7 Car. & P. 314). The s. 13, *ante*, p. 50, is not so extensive as this.

¹⁰ *Vide* Chap. XII., *post*, for the mode of recovery of all penalties under the 1 & 2 Will. 4, c. 32; and Nos. 21, 22, 23, p. 107, modes of describing the offences here enacted.

¹¹ See *Evans v. McLoughlan*, 4 Law T. (N. S.) 31; 25 J. P. 211.

1 & 2 Will. 4, or pursuit of game, or woodcocks, snipes, quails, landrails or conies, any of such persons being then and there armed with a gun, and such persons or any of them shall then and there, by violence, intimidation or menace, prevent, or endeavour to prevent, any person authorized as hereinbefore mentioned [in s. 31, *supra*], from approaching such persons so found, or any of them, for the purpose of requiring them or any of them to quit the land whereon they shall be so found; or to tell their or his christian name, surname or place of abode respectively as hereinbefore mentioned,—every person so offending by such violence, intimidation or menace as aforesaid,—and every person then and there aiding or abetting such offender,—shall, upon being convicted thereof before two justices of the peace, forfeit and pay for every such offence such penalty, not exceeding five pounds, as to the convicting justices shall seem meet, together with the costs of the conviction;¹²—which said penalty shall be in addition to and independent of any other penalty to which any such person may be liable for any other offence against this act.”¹³

Penalty for
trespass in
day-time in
his majesty's
forests.

Sect. 33.

Sect. 33 enacts,—“That if any person whatsoever shall commit any trespass, by entering or being in the day-time, upon any of his majesty's forests, parks, chases or warrens, in search or pursuit of *game*, without being first duly authorized so to do, such person shall, on conviction thereof before a justice of the peace, forfeit and pay such sum of money not exceeding two pounds as to the justice shall seem meet, together with the costs of the conviction.”¹⁴

¹² *Vide Chap. XII., post*, for the mode of recovery of this and other penalties under the 1 & 2 Will. 4, c. 32; and Nos. 24, 25, pp. 107, 108, the modes of describing the offences.

¹³ The additional penalty here referred to is that under s. 30, *ante*, p. 99, of 5*l.* for being in a party of five.

¹⁴ This section is entirely unnecessary in respect to *game* as defined by the act, the same offence being provided in s. 30, *ante*, p. 98, which applies to woodcocks, &c., also.

[Sect. 34 is the definition of "day-time," and is ^{1 & 2 Will. 4,}
^{c. 32.} in note ², p. 98.]

Sect. 35 enacts,—“That the *aforesaid* provisions against trespassers and persons found on any land shall not extend to any person hunting or coursing upon any lands with hounds or greyhounds, and being in fresh pursuit of any *deer*, *hare* or *fox* ^{The provi-} ^{sions as to} ^{trespassers} ^{not to apply} ^{to persons} ^{hunting, &c.} ^{Sect. 35.} already started upon any other land,—nor to any person *bond fide* claiming and exercising any right or reputed right of free warren or free chase,—nor to any gamekeeper lawfully appointed within the limits of any free warren or free chase,—nor to any lord or any steward of the crown of any manor, lordship or royalty, or reputed manor, lordship or royalty,—nor to any gamekeeper lawfully appointed by such lord or steward within the limits of such manor, lordship or royalty, or reputed manor, lordship or royalty.”¹⁴

Sect. 36 enacts,—“That when any person shall be found by day or by night¹⁵ upon any land,—or in any of his majesty’s forests, parks, chases or warrens,—in search or pursuit of game, and shall

There is no increased penalty by this s. 33 when the number of offenders is five or more as in s. 30; but by the general law (p. 117), each would be liable to 24. *Vide Chap. XII., post*, for the mode of recovery of this penalty; and No. 26, p. 108, for the mode of describing the offence. It is observable that the 23 & 24 Vict. c. 90, s. 11, *ante*, p. 71, does not declare a licence void after a conviction for this offence, like one under s. 30. The acts as to the royal forests are mentioned in note⁷ *ante*, p. 85.

^{Game may be taken from trespassers not delivering up the same when demanded.}

Sect. 36.

¹⁵ This provision does not seem to exempt from the provisions of the 1 & 2 Will. 4, c. 32, persons hunting or coursing who have not found, but are *in search of*, a hare (Locke, G. L. 43). With respect to deer, although not game, and not within either of the sections as to trespasses, they are now within the rule of the excise laws, and require a licence to kill, except in coursing, &c. See 23 & 24 Vict. c. 90, s. 2, *ante*, p. 60, and exceptions in s. 5, *ante*, pp. 64, 66. See the remarks, p. 109, as to the action at common law for trespass.

¹⁶ Day-time is defined by s. 34, *ante*, p. 98, note². There is no definition of “night” in this act, and therefore that in the 9 Geo. 4, c. 69, being the portions of time excluded by s. 34, must be followed (*Vide Chap. XIII.*). The power to demand and seize game is not given by the latter act.

Sect. 30. 1 & 2 WILL. 4. then and there have in his possession any game¹⁷
c. 32. which shall appear to have been recently killed, it
shall be lawful for any person having the right of
killing the game upon such land, by virtue of any
reservation or otherwise, as hereinbefore mentioned,
—or for the occupier of such land (whether there
shall or shall not be any such right by reservation
or otherwise),—or for any gamekeeper or servant
of either of them,—or for any officer as aforesaid
of such forest, park, chase or warren,—or for any
person acting by the order and in aid of any of
the said several persons,¹⁸—to demand from the
person so found such game in his possession, and
in case such person shall not immediately deliver
up such game, to seize and take the same from
him¹⁹ for the use of the person entitled to the game
upon such land, forest, park, chase or warren.”

FORMS.

19. Statement of offence of trespassing in pursuit of game, &c., alone.
(1 & 2 Will. 4, c. 32, s. 30.) For that you [or he the said A. B.,] on the — day of _____, at the parish of — in the said county, unlawfully did commit a certain trespass by entering and being in the day-time of the same day upon a certain* piece of land in the possession and occupation of F. G. there, in search [or pursuit] of game [if known, say, to wit, a partridge, or woodcocks, snipes, quails, landrails and conies], there, without the licence or consent of the owner of the land so trespassed upon, or of any person having the right of killing the

¹⁷ This section does not give a power to seize woodcocks, snipes, quails, landrails or conies.

¹⁸ *Vide note⁹, ante, p. 103.* No constable can act under this enactment on the land referred to, unless ordered to do so in aid of the authorized persons who are also present. It is to be observed that the Poaching Prevention Act, 25 & 26 Vict. c. 114 (Chap. XVI.), is confined to a search by a “constable or peace officer” of the supposed offender when in a “highway, street, or public place.”

¹⁹ The demand must be made on the land at the time or on fresh pursuit (*Wisdom v. Hodson*, 3 Tyr. 811).

game upon such land, or of any other person having any 1 & 2 Will. 4,
right to authorize you [or the said A. B.] to enter or be c. 32.
upon the said land for the purpose aforesaid, contrary, &c.

For that you [or he the said A. B.] on &c., at &c., to- 20. The like,
gether with other persons as yet unknown [or together with to the num-
E. F., F. G., and other persons as yet unknown], to the ber of five or
number of five or more, unlawfully did commit a certain
trespass, &c. [follow as in form, No. 19, supra, to the end.]

For that you [or he the said A. B.] on &c., at &c., were 21. Tres-
[or was] found on a certain piece of land in the possession passer refus-
and occupation of F. G. there [or upon a certain forest, or ing to tell his
park, &c., belonging to her majesty, called ———] in the day- name, &c.
time of the same day, there unlawfully in search [or pursuit] (Id. s. 31).
of game [or woodcocks, &c.] there without due licence and
authority for that purpose, and that you were [or the said
A. B. was] then and there required by the said F. G., then
being the occupier of the said land,

[or by G. H., being then the servant, or gamekeeper,
of the said F. G., then being the occupier of the
said land],

forthwith to quit the said land whereon you were [or he was]
so found, and also to tell your [or his] christian name, sur-
name and place of abode ; and that you [or the said A. B.],
after being so required as aforesaid, unlawfully did offend,
by refusing to tell your [or his] real name [or place of
abode], contrary, &c.

Proceed to the asterisk in form No. 21, supra, then : un- 22. Giving an
lawfully did offend, by giving such a general description of illusory de-
scription your [or his] place of abode as was illusory for the purpose (Id.)
of discovery, to wit, that it was in London [or as the case
may be], contrary, &c.*

Proceed to the asterisk in form No. 21, supra, then : 23. Continu-
unlawfully did offend, by wilfully continuing [or returning] ing or re-
upon the said land for a long space of time, to wit, [half an the land (Id.)
hour], contrary, &c.*

For that you [or he the said A. B.] on &c., at &c., to- 24. Tres-
gether with other persons as yet unknown [or together with passers found
E. F., F. G., and other persons as yet unknown], to the armed and
number of five or more, were found on a certain piece of using vio-
land in the possession and occupation of F. G. there [or a. 32].

1 & 2 WILL. 4, upon a certain forest or park, &c., belonging to her majesty, c. 32. called ——], in the day-time of the same day, there in search [or pursuit] of game [or woodcocks, &c.] there, without due licence and authority for that purpose, you [or the said A. B.] [or one of the said persons, to wit, E. F.] being then and there armed with a gun, and that you [or the said A. B.] [or one of the said several persons, to wit, E. F.] then and there, by violence [or intimidation or menace], to wit [describe the violence, &c.], unlawfully did prevent [or endeavour to prevent] the said C. D. [or one G. H., being then the servant of the said I. K.], the occupier of the said land [or as the case may be], from approaching you [or the said A. B.], and the said other persons, so then and there found as aforesaid, for the purpose of then and there requiring them to quit the said land whereon they were so found [or requiring them to tell their christian names, surnames and places of abode respectively], contrary, &c.

25. Aiding or abetting offender (Id. a. 32). *Proceed with offence against the principal or principals as in the last form, and then:* and that you [or he the said F. G.], unlawfully then and there did aid and abet the said A. B. to do and commit the said offence, contrary, &c.

26. Trespass in search or pursuit, &c. in her majesty's forests, &c. (Id. a. 33). *Proceed as in the form No. 19, ante, p. 106, to the asterisk,* and then:* forest [or park, or chase, or warren] of her majesty the Queen, there called ——, in search [or pursuit] of game there, without being duly authorized so to do, contrary, &c.

2. By action at common law.

By the common law any person who has a freehold estate in land, subject to no easement or right of common or profit in favour of another, is entitled to the exclusive use of it, and to defy all comers, and order them off at will, and use just sufficient force and no more to drive them off; and if he goes beyond that he puts himself in the wrong; but this rule is applicable only when the owner of the land is himself present.²⁰ The same authority

²⁰ 3 Bla. Com. 209; *Ilott v. Wilkes*, 3 B. & Ald. 317, per Best, J.; 3 Burn's Jus. 29th ed., p. 256; Paterson, G. L. 45.

belongs to the tenant or occupier, even against his landlord, unless some right of entry is reserved.

The law terms every unwarrantable entry on another's soil a trespass by breaking his close; and every such entry or breach of a man's close carries necessarily along with it some damage or another; for if no other special loss can be assigned, there is the treading down and bruising the herbage, for which the owner or the tenant in possession is entitled to recover nominal damages.²¹ Indeed, it may be said generally that no man can come upon another's ground to kill or take game, alive or dead, or for any other purpose, without being liable to an action of trespass, whether he find the game first on his own land or not and pursue it into the other's.²² The following are instances in which such actions have been or may be sustained: a party without entering the land of another shooting into it, and striking the soil with the shot;²³ or shooting over it maliciously and with intent to frighten game from a preserve;²⁴ with dogs and guns hunting for game;²⁵ by coursing or hunting with hounds, whether they are in fresh pursuit or not of any deer, hare or fox, started in some other or the same land, as the 1 & 2 Will. 4, c. 32, s. 35, *ante*, p. 105, only excepts persons when (Exception, 1 & 2 Will. 4, c. 32, s. 35.) they are "in *fresh* pursuit of any deer, hare or fox already started upon any *other* land," from the summary proceeding before magistrates under ss. 30, 32, 33, which common law remedy is saved by s. 46, *ante*, p. 97.²⁶ Where damage is done in coursing with hounds, the action for trespass

Every unwarrantable entry on another's land is a trespass.

Cases upon which actions for trespass may be sustained:

—shooting into or over land;

—hunting or

coursing;

²¹ Levinge's Ir. G. L. 31, 32; Locke, G. L. xlvi.

²² 2 Bac. Abr. 613; 2 Bla. Com. 417; 2 Bla. Rep. 900; *Deane v. Clayton*, 7 Taunt. 489.

²³ *Pickering v. Rudd*, 4 Campb. 220; 1 Stark. N. P. 58.

²⁴ *Keeble v. Hickeringill*, 11 East, 574; see *ante*, p. 38.

²⁵ *Merest v. Harvey*, 1 Marsh. 139; 5 Taunt. 448, in which heavy damages were given, the trespass being accompanied "by every kind of insult and aggravation."

²⁶ Bell, G. L. 113; Locke, G. L. xlvi.

— damage done in hunting, 24 & 25 Vict. c. 97, s. 52, not applicable;

— dog on land by master's consent.

— by servants and hounds;

— fox hunter can only kill fox, &c., not enter building;

— on wastes of manor;

— by lord on other lands;

— action against hunters by proprietors of game;

is the only remedy, for the Malicious Injury Act, 24 & 25 Vict. c. 97, s. 52, which allows a summary proceeding before justices for malicious and wilful trespasses causing *actual* damage to property, provides that it shall not extend to "any trespass not being wilful and malicious, committed in hunting, fishing, or in the pursuit of game, but that every such trespass shall be punishable in the same manner as if this act had not been passed." A dog jumping into a close, with the consent or by incitement of the master, is a trespass on the part of the master. A master is also liable for the trespass of his servants and friends with his hounds. Digging or breaking the soil to unearth a fox, badger or otter; or hunting or beating about the grounds of another to find them; or breaking hedges in the pursuit, although the law allows the entering the lands of others to follow beasts of prey,

whose destruction is to the public benefit; and therefore a fox-hunter cannot do more than is absolutely necessary to kill the fox or other animal, nor can he enter any building of a stranger to take either.²⁷ A lord of a manor, the wastes and commons of which being *prima facie* vested in him, may maintain such action against any one who trespasses upon them, whether he be a commoner or not; but he cannot sport on the lands of the copyhold tenants, or indeed on any other lands not in his own occupation, without rendering himself liable to the action.²⁸ In the Chapter (I.) as to property in game and wild creatures, we have casually adverted to some cases (*ante*, p. 27) in which actions may be brought by the persons entitled to game, which may conveniently be repeated in this

²⁷ *Hill v. Walker*, Peake, Add. C. 234; *Baker v. Berkeley*, 3 C. & P. 33; *Levinge*, Ir. G. L. 35, 36; *Bell G. L.* 115—122; *Locke*, G. L. xliv. to xlvi.; 3 *Burn's Jus.* 29th ed. p. 249.

²⁸ *Bruce v. Helliwell*, 5 H. & N. 609; 2 Bl. Com. 39, 419; 11 Mod. 74; *Bourne v. Taylor*, 10 East, 189; *Pickering v. Noyes*, 4 B. & C. 646; *Paterson*, G. L. 21, 22.

place, although they are doubtless within the principle here stated, viz. — against a hunter who starts game on the land of B. and kills it in the land of C., at the suit of both; if started and killed in B.'s, at the suit of B.; or if started in a free warren of B. (though it be in the hunter's own land) and hunted and killed in the land of C., at the suit of both, although the property in the game, in most of these instances, is the captor's. Likewise, that the taking — by taking or destroying of the young of game, and the eggs of young birds and their birds generally, when not punishable summarily by eggs. statute, is the subject of an action of trespass (*ante*, p. 31).

Incidental to the subject of trespass is the right of Spring guns owners and occupiers of land to do what they like ^{and man-}
to protect it from intruders, by placing traps and ^{24 & 25 Vict.} spears thereon. But the ^{c. 100, s. 31} (a re-enactment of 7 & 8 Geo. 4, c. 18), enacts :—

“ Whosoever shall set or place, or cause to be set or placed, Setting them any spring-gun, man-trap, or other engine calculated to with intent to inflict destroy human life, or inflict grievous bodily harm, with the grievous intent that the same or whereby the same may destroy or bodily harm; inflict grievous bodily harm upon a trespasser or other person coining in contact therewith, shall be guilty of a misdemeanor, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for the term of three years, or to be imprisoned for any term not exceeding two yea. s, with or without hard labour; — and who- or occupier soever shall knowingly and wilfully permit any such spring- permitting gun, man-trap, or other engine which may have been set them to remain. or placed in any place then being in or afterwards coming into his possession or occupation by some other person to con- tinue so set or placed, shall be deemed to have set and placed such gun, trap, or engine with such intent as aforesaid :— Provided that nothing in this section contained shall ex- — exception tend to make it illegal to set or place any gun or trap, such of vermin traps, as may have been or may be usually set or placed with the intent of destroying vermin :— Provided also, that nothing and gins in in this act shall be deemed to make it unlawful to set or place or cause to be set or placed, or to be continued set or placed, from sunset to sunrise, any spring-gun, man-trap, or other engine which shall be set or placed, or caused or continued to be set or placed, in a dwelling-house, for the protection thereof.”

*Placing dog-spears, &c. on land.
Result of decisions.*

—poisoned baits.

Remedy for trespass by action;

There also have been various decisions as to the legality of placing dog-spears, &c., on land with and without notice of their being so placed, and the result of the authorities is thus summed up:³⁰ *prima facie*, the owner or occupier of the land can no longer set spring-guns and man-traps, but he is entitled to plant dog-spears and such safeguards in his fields and woods. It is, however, always prudent and fair to the public to put up a notice to that effect, for though, strictly speaking, an owner is not bound to give any such notice, it always gives an owner an advantage in the result, and may influence the question of costs in the event of an action being brought. Not only may the owner of the lands set dog-spears, but he may also put strongly-scented baits,³¹ so as to lure the dogs or cats to their fatal doom. But he must not put these strong-scented meats close to the outside boundary of his property, for if so the smell will then invade the neighbour's field or the highway, and so will attract the dogs, and influence their instinct, while they are lawfully on their own soil; and the landowner becomes the aggressor, and is liable for the consequences.

As to the remedy by action, it is either in one of the superior courts of law, or in the county court, where the damages are laid at less than £50, and where no title arises.³² The statute law of England

³⁰ Paterson, 50, 51; *Ilott v. Wilkes*, 3 B. & Ald. 304; *Bird v. Holbrook*, 4 Bing. 628; *Jordan v. Crump*, 8 M. & W. 782; *Deane v. Clayton*, 7 Taunt. 489; *Townsend v. Wathen*, 9 East, 277.

³¹ The Poisoned Grain Prohibition Act, 1863, 26 & 27 Vict. c. 113, prohibits the placing of poisoned grain, seed or meal only (see s. 3, Chap. IX.).

³² 9 & 10 Vict. c. 95 and 13 & 14 Vict. c. 61, s. 1. By 9 & 10 Vict. c. 95, s. 58, the County Court is not to try actions in which the title to any corporeal or incorporeal hereditament or to any franchise is in question, except by consent of the parties (19 & 20 Vict. c. 108, s. 26); and such court has jurisdiction in all actions which may be brought in a Superior Court, if the parties agree in writing to it (*Id.* s. 23).

is defective in not giving some summary and inexpensive remedy against persons for the trespasses described, viz., those where the trespasser is not searching for game, nor doing any appreciable damage to the land or anything upon it, nor committing any act of vagrancy, which are offences already provided for, because the expensive and dilatory proceeding of an action at law against the class of persons who are mostly addicted to trespassing on another's ground is, to use a common phrase, "a remedy worse than the disease." It is true, the owner or occupier can order the trespassers off, and, if necessary, use just sufficient force to expel them, but he cannot apprehend the trespassers or give them into custody, as there is no general authority to arrest in such cases (see s. 31, *ante*, p. 102), unless actual breach of the peace has occurred, nor can he shoot their dogs, except they are in the act of damaging some property (s. 13, *ante*, p. 50), or the owner have a right of free warren, &c., over the land.³³ This remedy by action is the exclusive one whenever any title to the land, or to the right of entry thereon to shoot the game, is in question, since then the summary remedy before justices, as we have seen (*ante*, p. 100, note), cannot be applied. It is advisable to give a personal notice to the individual trespasser, or a printed caution, wherein the lands should be particularly described, and any trespass afterwards committed would then be considered wilful. [Vide Forms, p. 114.]

If the jury in an action in a superior court give a verdict for the damage of £5 or greater, the plaintiff is entitled to his costs from the defendant, the

Previous notice not to trespass, advisable.

³³ In Scotland, a cheap and prompt interdict or injunction is obtainable from the local court (Paterson, xli., 169); and in Ireland there is a summary proceeding before justices against trespassers refusing to leave after being warned, or repeating the offence, if it be done not in hunting, fishing or in pursuit of game (14 & 15 Vict. c. 92, s. 8). See *Jordan v. Gibbon*, 8 Law T., N. S. 391, that there is no power to give into custody for a mere trespass.

Costs of
action.

trespasser; but if it be below £5 the plaintiff is not so entitled if the judge who tried the cause certifies "that the action was not really brought to try a right besides the mere right to recover damages, and that the trespass or grievance in respect of which the action was brought was not wilful and malicious, and that the action was not fit to be brought" (23 & 24 Vict. c. 126, s. 34). As to the defence in such actions, see Locke, G. L. lxvii. to lxxi., and books on common law practice.



F O R M S .

27. General
notice not to
trespass
(Bell, G. L.
319).

CAUTION.—Take notice, that all trespassers on any land on either side of the adjoining highway, for half a mile in length and one mile in depth, on each side of and opposite to this notice, will be prosecuted as wilful trespassers under the Game Act, and otherwise according to law.

C. D.

Or this as an advertisement : NOTICE.—Notice is hereby given, that all persons found trespassing in search or pursuit of game on the estates of — and —, in the parish of —, the property of —, Esq., will be prosecuted.

E. F., Steward.

To Mr. A. B.

28. Notice to
a particular
person not to
trespass.

I hereby give you notice not to enter or trespass upon any of the lands and hereditaments [*if given by a tenant, say, in my occupation*] belonging to me [*and, if so, in my occupation, or in the occupation of E. F. and F. G.*], situate at &c., and called —, for the purpose of pursuing, taking, killing or destroying game [*or for the purpose of hunting, hawking, coursing, shooting, fishing or fowling*], or for any other purpose or under any pretence or pretext whatsoever: And that in case you shall do so after the service of this notice [*or in case after service of this notice you shall enter or trespass upon the said lands and hereditaments, or any part thereof, for any or either of the purposes aforesaid*], you will be deemed a wilful trespasser, and dealt with [*or proceeded against accordingly*].

Dated at —, this — day of —, 1863.

C. D.



CHAPTER VIII.

UNLAWFULLY TAKING GAME, &c. IN THE DAY-
TIME, IN ENGLAND.

WE have already shown who can take game (*ante*, p. 5), what licences are necessary to be obtained to kill or take game by owners and occupiers of lands, gamekeepers and other persons; the exemptions, and the mode of obtaining the licences (*ante*, pp. 58—79); that game cannot be taken out of season, or on a Sunday or Christmas-day (*ante*, pp. 46—48). We shall in other Chapters give the enactments as to the unlawful taking of eggs of birds of game (IX.), taking game by night (XIII.), killing deer (XIV.), killing hares, &c., in warrens (XV.), and the Poaching Prevention Act, 1862 (XVI.). Here it is proposed to give some provisions which are cumulative upon all these.

By 1 & 2 Will. 4, c. 32, s. 23, it is enacted,—
 “That if any person shall kill or take any game, or use any dog, gun, net, or other engine or instrument, for the purpose of searching for or killing or taking game,¹—such person not being authorized so to do for want of a game certificate,² he shall,

1 & 2 Will. 4, c. 32.

Penalty for killing game without a certificate.

Sect. 23.

¹ The 11 & 12 Vict. c. 29, s. 5, *ante*, p. 91, prohibits the using of any fire-arms or gun *by night* for killing hares or other game.

² This enactment does not apply to woodcocks, snipes, quails, landrails or conies, nor to hares killed by an owner or occupier thereto authorized, or to those persons who are exempted from taking out a licence by 23 & 24 Vict. c. 90, s. 5, *ante*, pp. 64, 66, nor to deer; but the person killing wood-

1 & 2 Will. 4, on conviction thereof before two justices of the peace, forfeit and pay for every such offence such sum of money not exceeding five pounds, as to the said justices shall seem meet, together with the costs of the conviction :³

Sect. 23.

cocks, snipes, quails, landrails, or conies, or deer, without possessing an excise "licence to kill game," is liable to the penalty of 20*l.* by 23 & 24 Vict. c. 90, s. 4, *ante*, p. 62, but not to be surcharged any duty as before the 23 & 24 Vict. c. 90 ; see note ¹⁰, *ante*, p. 63. See the proviso to this section, *infra*. The 24 & 25 Vict. c. 96, ss. 12—16, relates to the killing of deer (Chap. XIV.). As to the act constituting the offence : if a man standing in one parish or county shoot at game in another, he uses the gun in the district in which he stands (*Rex v. Allsopp*, 1 Show. 339; *Mayhew v. Wardley*, 8 Law T., N. S. 504). See also 23 & 24 Vict. c. 90, s. 11, *ante*, p. 71, as to forfeiture of licence on conviction of a trespass, and the cases noticed under 23 & 24 Vict. c. 90, s. 4, *ante*, p. 62. It will lie on the defendant to prove that he is qualified by a licence, or exempted from taking it out (1 & 2 Will. 4, c. 32, s. 42, *post*, Chap. XII.). See also note ⁵, *ante*, p. 101.

Penalty where several offenders.

³ *Vide* Chap. XIII., *post*, as to the mode of recovery of this penalty ; and Nos. 29, 30, p. 119, the statements of the offences. It is said to be clear that where there is a repetition of several acts on the same day in pursuit of the same object, the penalty is single, as if an unlicensed person upon the same day kill several hares, partridges, &c., or use a dog, and also a gun, he is only liable to one penalty under this section (Locke, G. L. 8, 32; Oke's "Synopsis," 8th ed. pp. 103, 104, 138, 139). But he is nevertheless liable to one penalty for the *taking* of game, and another for *using* a dog at another time for the purpose of taking game, if committed on the same day within the same or another jurisdiction, but on different persons' lands or occupations (see Bell, G. L. 104; *Brooke v. Milligan*, 3 T. R. 509; Locke, G. L. 8; Paley, 4th ed. p. 221), as the offences are distinct and separate (*Reg. v. Matthews*, 10 Mod. 26) ; and so a trespasser would also, it is apprehended, if the acts were distinct and separate, as for instance, he went on the same day and in the same place, if he once left the place and returned again (Bell, G. L. 145, 146). With respect to the amount of the penalty which may be imposed on offenders where there are several joining in the commission of this offence by using one dog, gun, &c., or killing a hare, it has long been a moot point whether or not it is a joint offence punishable with one penalty of 5*l.* divis-

“ Provided always, that no person so convicted ^{1 & 2 Will. 4,}
shall by reason thereof be exempted from any ^{c. 32.}

This penalty
to be cumu-
lative.

ible amongst the whole, or a several offence in which the full penalty may be imposed on each. It is scarcely necessary to refer to the old cases on this point, because in most of them a strained and forced construction has been put upon the statutes under which they were given, and the current of recent decisions all incline the other way. We think there is ^{Each of-} no such distinction between a joint and several offence as has ^{been liable} been contended: it is entirely unintelligible; for where the ^{to full} offence arises from the joint act of the parties, each person, we apprehend, is liable for all the consequences (as, in fact, each case is distinct, depending on the evidence against each person), unless the act creating the offence plainly intends otherwise. The true test in these cases is the wording of the statute, as laid down by *Alderson*, B., in *Reg. v. Dean*, 12 Mees. & W. 39 (which, however, was an excise case against partners, where each was held liable for the same offence), wherein he says,—“ You must look at the statute to see whether every *person* is to be punished, or every *offence* is to be punished. If every offence is to be punished there is to be one penalty only, however large the number of persons that committed it; but if there are several penalties on each person, it is obviously otherwise.” The more recent case of *Reg. v. Justices of Staffordshire* (32 L. T. 105; 23 J. P. 486), which was upon convictions in several penalties under this particular section of 1 & 2 Will. 4, c. 32, favours our view that each is liable to the full penalty (Oke’s “ Synopsis,” 8th ed., pp. 138, 139), and so does the last case of *Mayhew v. Wardley*, *supra*, note ². Indeed the clause itself appears to us to point to the intention of the legislature that every person, and not every offence, should be punished. It would be manifestly absurd to parcel out a penalty of 5*l.*, where there were, say, twenty offenders, when by many sections of this act (1 & 2 Will. 4, c. 32, ss. 30, 32), the legislature has increased the penalty where the offenders go in a party of five or more. How would it be in a case where the statute imposes a term of absolute imprisonment? Could it be apportioned too? Whichever view may hereafter be decided to be the law, some of the parties may, it is conceived, be treated as aiders and abettors in the offence under 11 & 12 Vict. c. 43, s. 5 (Chap. XII.), and so liable to the same penalty as the principal who uses the dog, gun, &c.; for it seems to be admitted that if each did a separate substantive act forbidden by this section, each would be liable (Christian’s G. L. 161; Bell, G. L. 192; 25 J. P. 28). Independently of these enactments, by the well known principle

1 & 2 Will. 4, penalty or liability under any statute or statutes c. 32. relating to game certificates, but that the penalty imposed by this act shall be deemed to be a cumulative penalty.”⁴

Officers in
the army
killing, &c.,
game or fish
without
leave.

26 Vict. c. 8,
s. 88.

The like,
officers in the
marines.

By the Annual Army Mutiny Act, 26 Vict. c. 8, s. 88, it is “for the better preservation of game and fish in or near places where any officers shall at any time be quartered,” enacted,—“That every officer who shall, without leave in writing from the person or persons entitled to grant such leave, take, kill, or destroy any game⁵ or fish in the united kingdom of Great Britain and Ireland, shall for every such offence forfeit the sum of five pounds.”⁶

The Annual Marine Mutiny Act, 26 Vict. c. 9,

of the common law, all persons present and concerned in misdemeanors are principals; and so by the Forest Laws (Bell, G. L. 103).

⁴ The other penalty referred to in this proviso is the ex-
cise one of 20*l.* under 23 & 24 Vict. c. 90, s. 4, *ante*, p. 62.

⁵ The term “game” must be understood in its usual signification as defined by 1 & 2 Will. 4, c. 32, s. 2, *ante*, p. 46, and, therefore, does not include woodcocks, snipes, quails, landrails or conies; but the offender would be liable to the trespass penalty in respect to them (s. 30. *ante*, p. 98).

⁶ Sect. 90 of this act (26 Vict. c. 8) applies the provisions of the 11 & 12 Vict. c. 43, (the act which regulates the procedure in respect to summary convictions before justices in England), to the recovery of this penalty in *every* part of the united kingdom, before one or more justice or justices (notwithstanding 14 & 15 Vict. c. 93 applies to justices’ proceedings in Ireland), except that in default of distress the period of imprisonment is increased from three to six calendar months. The information therefore must be laid within six calendar months of the offence (11 & 12 Vict. c. 43, s. 11; Oke’s “Synopsis,” 8th ed., p. 97), and, on conviction, the penalty and costs are to be levied by distress (Id. ss. 19, 20, 21), and, in default of distress, six calendar months’ imprisonment *without hard labour*, unless sooner paid (26 Vict. c. 8, s. 90). One moiety of the penalty is payable to the informer, and the remainder, or, if the offence be proved by the informer, the whole of it is to be paid to the general agent for the recruiting service in London; and the conviction is to be reported by the justice to the secretary at war within four days (Id. s. 91). *Vide* statement of offence, No. 31, p. 120.

s. 91, is a similar enactment as to officers in the ^{26 Vict. c. 9,} royal marine forces, and it enacts,—“For the better ^{s. 91.} preservation of the game and fish in or near places where any officer shall at any time be quartered, every officer who shall, without leave in writing from the person or persons entitled to grant such leave, take, kill, or destroy any game or fish within the united kingdom, shall for every such offence forfeit the sum of five pounds.”⁷

FORMS.⁸

For that you [*or he* the said A. B.] on &c., at &c., unlawfully did kill [*or take*] certain game, to wit, one [partridge], you [*or he* the said A. B.] not being then and there authorized so to do for want of a licence to kill game, contrary, &c.

For that you [*or he* the said A. B.] on &c., at &c., unlawfully did use a certain dog, to wit, a [lurcher] (and not being a greyhound), for the purpose of then and there searching for [*or taking, or killing*],

[*or a certain gun, for the purpose of then and there killing*].

[*or a certain net, or engine, or instrument, to wit, a snare, for the purpose of then and there taking*] game [*if known say, to wit, one hare*], on certain land in the occupation of one E. F. there situate, you [*or he* the

29. Killing
or taking
game with-
out a licence
(1 & 2 Will.
4, c. 32, s. 23).

⁷ *Vide* notes ⁵ and ⁶, *supra*. 26 Vict. c. 9, ss. 93, 94, contains similar enactments as in the note ⁵, with this difference, that the conviction may take place before “any justice in or near to the place where the offence shall be committed, or where the offender may at any time happen to be,” that the imprisonment may be *with or without* hard labour and that the conviction is to be reported to the secretary of the admiralty.

⁸ These statements of offences are to be used in filling up the general forms in Chap. XII., *post*.

said A. B.] not being then and there authorized so to do for want of a licence to kill game, contrary, &c.

31. Officers
in the army
or navy
taking game
or fish (*ante,*
pp. 118, 119). For that you [*or he* the said A. B.] on &c., at &c., being then an officer in her majesty's army [*or* marine forces], unlawfully did take [*or* kill, *or* destroy] certain game [*or* fish], to wit, —, without any leave in writing for so doing had or obtained from the person entitled to grant such leave, contrary, &c.

CHAPTER IX.

UNLAWFULLY DESTROYING GAME, OR EGGS OF
BIRDS.

-
1. *Enactments in the Game Acts, infra.*
 2. *Destroying Game, &c., by Poisoned Grain or by Firing Crops, &c., p. 123.*
-

1. ENACTMENTS IN THE GAME ACTS.

By 1 & 2 Will. 4, c. 32, s. 3 (in part set out at pp. 46, 47), it is enacted, *inter alia*,—"If any person, with intent to destroy or injure any game, shall at any time put or cause to be put any poison or poisonous ingredient on any ground, whether open or inclosed, where game usually resort,—or in any highway,¹—every such person shall, on conviction thereof before two justices of the peace, forfeit

1. Enactments in the Game Acts.

1 & 2 Will. 4, c. 32.

Penalty for laying poison to kill game.

Sect 3 (in part).

¹ "Game" here must have the restricted meaning assigned to the word by 1 & 2 Will. 4, c. 32, s. 2, *ante*, p. 46. This section applies even to the proprietor of the game, and the occupier of the ground; and it should be observed that, while the use of arsenic is admitted to be necessary as a protection to the grain against blight or insects and permitted to be used by the 14 Vict. c. 13, s. 3, and 26 & 27 Vict. c. 113, s. 4, p. 126, in the steeping of seed wheat, the gist of the offence—the *intent to destroy or injure* game—will be all but impossible of proof, where the grain or seed is placed *into* the soil, and this section will apply only where the poison is put *on* the ground for no useful purpose. By the 26 & 27 Vict. c. 113, s. 3, *post*, p. 125, which is more extensive than this section both as to the poison and the place, no "intent" is necessary, thereby curing the defect in the Game Act. The 11 & 12 Vict. c. 29, s. 5, *ante*, p. 91, contains also a prohibition against the use of poison for destroying "hares or other game."

1 & 2 WILL. 4, c. 32, and pay such sum of money, not exceeding ten pounds, as to the said justices shall seem meet, together with the costs of the conviction.”²

Scotland and Ireland. In Scotland and Ireland there is no provision corresponding to the above enactment; but in Scotland there is the 11 & 12 Vict. c. 30, s. 4, which imposes no penalty (Chap. XVIII., Sect. 3). The 26 & 27 Vict. c. 113, p. 124, will therefore apply to such an offence in Scotland and Ireland.

Penalty for destroying or taking the eggs of game, &c.

Sect. 24.

Sect. 24 enacts,—“That if any person not having the right of killing the game upon any land,—nor having permission from the person having such right,—shall wilfully take out of the nest or destroy in the nest upon such land the eggs of any bird of game,—or of any swan, wild duck, teal or widgeon, —or shall knowingly have in his house, shop, possession or control, any such eggs so taken³,—every such person shall, on conviction thereof before two justices of the peace, forfeit and pay for every egg so taken or destroyed, or so found in his house, shop, possession or control, such sum of money, not exceeding five shillings, as to the said justices shall seem meet, together with the costs of the conviction.”

As to destroying game or rabbits by night, see Chap. XIII., “*Poaching by Night*,” and 11 & 12 Vict. c. 29, s. 5, *ante*, p. 91.

² *Vide Chap. XII., post*, for the mode of recovery of this penalty, and Nos. 32, 33, 34, p. 123, for the forms of stating the offences in justices’ proceedings.

³ *Vide ante*, p. 80, as to who has the right to the *game*, as defined by 1 & 2 Will. 4, c. 32, s. 2, *ante*, p. 46. It is remarkable that although the eggs of swans, wild ducks, teal and widgeons are protected in the breeding season, the birds themselves are not also then or at any time protected or mentioned in the Game Licences Act; nor are the eggs of woodcocks, snipes, quails or landrails. With respect to swans, they are the subject of larceny where they have been marked and pinioned, or even unmarked, if tame, kept in a mote, pond or private river; but larceny cannot be committed of their eggs, because the statute has appointed a less punishment for them. (East’s P. C. 2, 607; Locke, G. L. 33; Woohrych, G. L. 20—24). See further Chap. I. *ante*, p. 38.

FORMS.⁴1 & 2 Will. 4,
c. 32.

For that you [or he the said A. B.] on &c., at &c., unlawfully did put [or cause to be put] certain poison [or a certain poisonous ingredient] in certain open [or inclosed] ground there, called —, where game then usually resorted, [or in a certain highway there, called —], with intent thereby then and there to destroy [or injure] the said game, contrary, &c.

For that you [or he the said A. B.] on &c., at &c., unlawfully and wilfully did take out of [or destroy in] a certain nest, then being found upon certain land there, called — [or in the occupation of one E. F.] three eggs of a certain bird of game, to wit, a partridge [or eggs of a swan, or wild duck, or teal, or widgeon], you [or he the said A. B.] not having then and there the right to kill game upon the said land, and not having then and there permission so to do from any person having such right, contrary, &c.

For that you [or he the said A. B.] on &c., at &c., unlawfully and knowingly did have in your [or his] house there situate [or shop, possession or control] seven eggs of a certain bird of game, to wit, a partridge, &c. [or eggs of a swan, wild duck, teal or widgeon], which had been theretofore unlawfully and wilfully taken out of a certain nest upon certain land there, called — [or in the occupation of one E. F.], you [or he the said A. B.] then and there well knowing the said eggs to have been so taken as aforesaid, and not having then and there permission so to do from any person having such right, contrary, &c.

2. DESTROYING GAME, &C. BY POISONED GRAIN, OR FIRING CROPS, &C.

As game and other birds and animals are destroyed by indirect means, as by the placing of poisoned grain on land, both with and without any intent to destroy them, and by damaging and firing

⁴ These statements of offences are for use with the general forms in Chap. XII.

1 & 2 WILL. 4, crops of corn or heaths, plantations, &c., the Poisoned Grain Prohibition Act, 26 & 27 Vict. c. 113, which is applicable to the United Kingdom; the penal clauses of the Malicious Injuries Consolidation Act, 1861, 24 & 25 Vict. c. 97, applicable to England and Ireland only, and the acts as to Muirburn in Scotland and Ireland, may be appropriately placed or referred to in this chapter.

Poisoned
Grain Prohi-
bition Act,
26 & 27 Vict.
c. 113.

The 26 & 27 Vict. c. 113, passed 28th July, 1863, being *An Act to prohibit the Sale and Use of Poisoned Grain or Seed*,⁵ recites that, “it is expedient to prohibit the sale and use of poisoned grain or seed,”⁶ and enacts the following offences and exemptions:—

Penalty for
selling poi-
soned grain,
seed, or meal.
Sect. 2.

Sect. 2, enacts,—“ Every person who shall offer or expose for sale or sell any grain, seed, or meal which has been so steeped or dipped in poison, or with which any poison or any ingredient or prepara-

⁵ By sect. 1, “This act may be cited for all purposes as ‘The Poisoned Grain Prohibition Act, 1863.’”

⁶ This act is designed to prevent the destruction of birds, whether within the denomination of game or not, poultry and other animals, as well as the danger to human life, of late so prevalent through the use of poisoned grain, seed and other preparations purporting to be useful to destroy sparrows and vermin. It does not in terms apply to or affect the provisions of the Game Acts, except that s. 3 will, as stated in note¹, p. 121, extend and remove a defect in the enactment of 1 & 2 Will. 4, c. 32, s. 3, as to poison placed on ground with intent to injure game; nor will it interfere with the legitimate objects of agriculture in the employment of poisonous solutions for washing sheep, or the steeping of seed corn in poison, as now lawfully practised by some agriculturists (see s. 4, *post*, p. 126); nor will it, being confined to the sale of *poisoned grain, seed, or meal*, and their use *out of doors*, prevent other modes of destruction of sparrows and other small birds not already protected by law (as it should have done, as pointed out by the writer at p. 25), or the *sale* of any poisonous ingredient or preparation other than poisoned grain, seed or meal, or the *use* of any poisonous preparations, grain, seed, meal or otherwise, in dwelling-houses, for destroying mice, &c. (see s. 2, and notes⁷ and⁸.) It should also be observed that the act prohibits the *sale* of poisoned *meal* for any purpose; but, as observed in note⁹, p. 125, it may be used *in-doors*.

tion has been so mixed, as thereby to render the same ^{26 & 27 Vict.}
^{c. 113.} poisonous, and calculated to destroy life,⁷ shall in either case for every such offence, upon summary conviction, as hereinafter provided [in sect. 5, p. 126], forfeit any sum not exceeding ten pounds."

Sect. 3, enacts,—“Every person who shall knowingly and wilfully sow, cast, set, lay, put, or place,—or cause to be sown, cast, set, laid, put, or placed,—into, in, or upon any ground or other exposed place or situation, any such grain, seed, or meal which has been so steeped or dipped in poison, or with which poison or any ingredient or preparation has been so mixed as thereby to render such grain, seed, or meal poisonous, and calculated to destroy life,⁸ shall,

Penalty for
sowing, &c.
poisoned
grain, seed,
or meal.

Sect. 3.

⁷ By the act 14 Vict. c. 13, regulating the sale of arsenic, ^{14 Vict. c. 13.} arsenic is permitted to be sold under certain regulations, “for use in agriculture” (i.e., “to steep wheat,” see s. 3, and schedule). This act remains in force, as will be seen by the exemption clause, s. 4, p. 126, the sale and use of solutions for washing sheep not being touched by the statute law. Chemists and others may therefore continue to sell grain or seed which has been prepared by being steeped in arsenic or other poisonous solution or infusion for dressing, protecting or preparing it “for bona fide use in agriculture only,” as well as other poisonous ingredients or preparations; but they are not to sell for any other purpose any poisonous grain or seed, and for no purpose whatever any poisonous meal, calculated to destroy life, even of a sparrow or vermin in a house or out of it. *Vide* form of statement of offence, No. 35, p. 130.

⁸ This enactment, read in connection with s. 4, p. 126, imposes the penalty on the person who shall sow, cast, set, lay, put or place, &c., the poisoned grain, seed or meal “into, in or upon” the ground or exposed places mentioned,—but except the sowing (and that only) of grain or seed which has been prepared, as permitted by s. 4, “for bona fide use in agriculture only.” Therefore, if poisonous grain or seed, whether so prepared or not, is laid, &c. on, but not sown in the ground or other place; or if poisonous grain or seed, though not so prepared (if that can be), is sown in the ground; and also when poisonous meal is either sown, laid or placed, &c., in the places named,—the section appears to apply. *Vide* form of statement of offence, No. 36, p. 130. But occupiers and others are not prevented by this or any other act from placing in their dwelling-houses or other buildings any poisonous preparations, whether it be of grain, seed, meal or anything else, for destroying mice or other vermin; but see note ⁷, *supra*, as to the purchase of such articles.

26 & 27 Vict. c. 113. upon a summary conviction thereof as hereinafter provided [in sect. 5, *infra*], forfeit any sum not exceeding ten pounds.”

Solutions or infusions, &c. allowed for use in agriculture.

Sect. 4.

Recovery of penalties.

Application of 11 & 12 Vict. c. 43, and 14 & 15 Vict. c. 93, to this act.

Sect. 5.

Informer (not a constable) entitled to moiety of penalty.

Indemnity to witnesses, &c.

Sect. 4, enacts,—“ Nothing in this act shall prohibit the offering or exposing for sale or selling or the use of any solution or infusion, or any material or ingredient for dressing, protecting, or preparing any grain or seed for *bond fide* use in agriculture only, or the sowing of such last-mentioned grain or seed so prepared.”*

Sect. 5, enacts,—“ All penalties imposed by this act may be recovered in *England* and *Ireland* before two justices of the peace, and in *Scotland* before two justices of the peace or the sheriff;—and for that purpose in *England* and *Scotland* the provisions of the act of the eleventh and twelfth years of her present Majesty, chapter forty-three, and in *Ireland* the “petty sessions (*Ireland*) Act, 1851,” shall extend and apply to this act, and to all proceedings in relation thereto;—and it shall not in any such proceedings be necessary to allege or prove the ground or other place where an offence is committed to be the property of or occupied by any person :

Provided always, that the convicting justices or sheriff may, if they or he shall think fit, award to the informer or prosecutor (not being a police constable or peace officer) in any such proceedings any portion not exceeding one moiety of any penalty recovered under the aforesaid enactments :

Provided also, that every informer or prosecutor, and every person who shall give evidence against any other person proceeded against under this act, shall be freed and discharged from any such penalty which he may have incurred for or by reason of his having participated or aided in the commission

* The sale, use, and sowing of seed so dressed, was, as we have said, note⁷, *supra*, permitted by the Arsenic Act, 14 Vict. c. 18. This section gives permission for the sale and use of the [poisonous] solution, &c., as well as to the sowing of the prepared grain.

of the offence with respect to which he shall so inform or prosecute or give evidence, provided the information against such other person has been laid, or such evidence has been given, before the laying of any information (if any) against such informer, prosecutor or witness for the recovery of any penalty he may have so incurred."

As this act applies to the three parts of the *Procedure* United Kingdom, the following epitome of the statutory procedure in each may be useful:

In *England* and *Scotland*, under 11 & 12 Vict. — *England.*
c. 43:— *and Scotland.*

1. The information must be preferred before one justice within six calendar months (s. 11):
2. A summons or warrant may be issued to the defendant in the first instance, or a warrant on disobedience of the summons (ss. 1, 2):
3. Defendants may be bailed with or without sureties on adjournment of the hearing (s. 16):
4. A justice may issue a summons to any witness for either party (s. 7):
5. The hearing must be in open court, where either party may appear by counsel or attorney (s. 12); and it may be *ex parte* on proof of service of summons (s. 13); or, if informant do not appear, the information may be dismissed with or without costs, to be paid by informant (ss. 13, 14, 18, 26):
6. Costs may be ordered in all cases with penalty (s. 18):
7. Informers are competent witnesses, but not defendants or their wives (14 & 15 Vict. c. 99):
8. Convictions will be in the Form I 1 in Sched. to 11 & 12 Vict. c. 43 (s. 17):
9. The penalty and costs adjudged to be paid will be recovered by distress of the defendant's goods (s. 19); and in default thereof, imprisonment, without hard labour, for not exceeding three calendar months unless sooner paid (s. 22; 21 & 22 Vict. c. 73, s. 5) on the warrant of any one justice of the county, &c. (11 & 12 Vict. c. 43, s. 29):
10. The costs of defendant's conveyance to prison may be added to the penalty and costs (s. 23):
11. Forms of proceedings are provided by the act (s. 32):
12. There is no appeal allowed to the quarter sessions, but

**26 & 27 Vict.
c. 113.**

Procedure.

either party may appeal on a question of law only to a superior court, under 20 & 21 Vict. c. 43:

13. The penalty or portion not given to the informer will be paid by the justices' clerk to the treasurer of the county, &c. (s. 31).

[*Vide* the detailed practice and provisions, Oke's "Synopsis," 8th ed. pp. 91—190.]

—Ireland.

In Ireland, under 14 & 15 Vict. c. 93:—

1. The complaint must be preferred to one justice within six calendar months (s. 10):
2. A summons is to issue to the defendant in the first instance, or a warrant on disobedience of the summons or if he is keeping out of the way of service (ss. 11, 12):
3. Defendants may be bailed with or without sureties till the hearing (s. 11); or on adjournment of hearing (s. 20):
4. A justice may issue a summons to any witness for either party and require the production of documents (s. 13):
5. The hearing must be in petty sessions and in open court, where each party may appear by counsel or attorney (ss. 8, 9); and it may be *ex parte* on proof of service of summons, or if the complainant do not appear the complaint may be dismissed with costs (s. 20):
6. Costs may be awarded with the penalty (s. 22, art. 9):
7. Informers are competent witnesses, but not defendants (s. 13, art. 3):
8. Decision to be entered in books and have the effect of a conviction (s. 21):
9. The penalty and costs ordered will be recovered by distress of the defendant's goods, and in default thereof imprisonment with or without hard labour for not exceeding three months, according to a scale given, unless sooner paid (s. 22); by the warrant of any one justice (s. 23):
10. Forms of proceedings are provided by the act (ss. 36, 37):
11. An appeal is allowed to the defendant to the quarter sessions, where the penalty imposed exceeds 1*l.*, or the imprisonment exceeds one month (s. 24); and in addition there is the appeal to a superior court allowed to either party upon a point of law only under 20 & 21 Vict. c. 43:

12. The penalty or portion not given to the informer will 26 & 27 Vict. go to the crown (14 & 15 Vict. c. 93, s. 22, art. 8; ^{c. 115.}
and see 14 & 15 Vict. c. 90, s. 13.)

By the Malicious Injuries Act, 24 & 25 Vict. c. 97, s. 16, it is enacted,—“ Whosoever shall unlawfully and maliciously set fire to any crop of hay, grass, corn, grain or pulse, or of any cultivated vegetable produce, whether standing or cut down, or to any part of any wood, coppice, or plantation of trees,—or to any heath, gorse, furze, or fern, wheresoever the same may be growing,—shall be ~~Felony.~~ ^{Setting fire to crops of corn, &c.} guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for any term not exceeding fourteen years and not less than three years,—or to be imprisoned for any term not exceeding two years, ^{Sect. 16.} with or without hard labour, and with or without solitary confinement, and, if a male under the age of sixteen years, with or without whipping.”¹⁰

Setting fire to stacks of corn, &c. is a felony by s. 17; and the attempt to set fire to either crops or stacks is also a felony by s. 18. Accessories before and after the fact are punishable under sect. 56.

Sect. 41, which provides also for the summary punishment of persons “maiming or wounding” ^{Injuring game.} any bird, &c., being “the subject of larceny at common law,” will apply to *live* game, reclaimed ^{Sect. 41.}

¹⁰ Of course, this punishment can only be imposed on an ^{Procedure.} indictment triable at the assizes only (5 & 6 Vict. c. 38, s. 1), the procedure before justices in relation to which is regulated by 11 & 12 Vict. c. 42; Oke’s “Synopsis,” 8th ed., pp. 681—759. But reference should be made here to a few enactments in the 24 & 25 Vict. c. 97. By s. 61, persons in the act of committing any offence may be apprehended without a warrant. By s. 57, persons loitering at night (which the act ^{Sect. 57.} does not define, but see 24 & 25 Vict. c. 96, s. 1, Chap. XIV.), and suspected of having committed or being about to commit any felony, may be taken by a *constable*. The court may require sureties of the offender in addition to the punishment (s. 73). The costs of prosecution are allowed in felonies (7 Geo. 4, c. 64; Oke’s “Synopsis,” 8th ed., p. 756). See form, No. 37, p. 131, statement of offence for the commitment.

24 & 25 Vict. or confined, or reduced into possession. See the c. 97. enactment in Chap. XXII., post.

Muirburn. Muirburn in Scotland is punishable under the 13 Geo. 3, c. 54, ss. 4—7, given in Sect. 6 of Chap. XVIII.; in Ireland, under 10 Will. 3, c. 8, s. 7, and 27 Geo. 3, c. 35, s. 3, given in Sect. 8 of Chap. XIX.



FORMS.

35. Statement of offence of selling, &c. For that you [or he the said A. B.] on &c., at &c., unlawfully did offer [or expose for sale, or sell to one E. F.] poisoned grain, seed or meal certain grain [or seed, or meal] which had been theretofore so steeped or dipped in certain poison,

(26 & 27 Vict. c. 118, s. 2). [or with which a certain poison, or ingredient, or preparation had been theretofore so mixed], as thereby to render the said grain [or seed, or meal] poisonous and calculated to destroy life, (*adding in the case of grain or seed, "the same poison, or ingredient, or preparation, not being a solution or infusion or a material or ingredient for dressing, protecting or preparing the said grain, or seed, for bond fide use in agriculture,"*) contrary to the Poisoned Grain Prohibition Act, 1863, section 2.

36. The like, sowing, &c. For that you [or he the said A. B.] on &c., at &c., unlawfully did knowingly and wilfully sow, cast, and set, [or lay, put, and place],

poisoned grain, seed, or meal (1d. s. 3). [or cause to be sown, cast, and set, or laid, put, and placed], into, in and upon certain ground there called —, [or in and upon a certain exposed place and situation there, to wit, upon a certain tree, or wall, or building, &c.] certain grain [or seed, or meal] which had been theretofore so steeped or dipped in certain poison,

[or with which a certain poison, or ingredient, or preparation had been theretofore so mixed], as thereby to render the said grain [or seed, or meal] poisonous and calculated to destroy life, (*adding in the case of grain or seed, "the same poison, or ingredient, or preparation, not being a solution or infusion or a material or ingredient for dressing, protecting or preparing the said grain, or seed, for bond fide use in agriculture;" —and if the offence is the sowing, further adding, "and the said grain, or seed,*

so sown, cast and set, not being so prepared,") contrary to
the Poisoned Grain Prohibition Act, 1863, section 3.

For that he the said A. B., on &c., at &c., unlawfully,^{37.} The like,
maliciously and feloniously did set fire to a certain crop of setting fire to
corn, to wit, ten acres of wheat [*or crop of grain, or pulse*], crops of corn,
the property of [the said] C. D. there standing and grow- heath, wood.
ing [*or cut down*]. &c. (24 & 25
[*or to a certain part of a certain wood, or coppice, or*
plantation of trees, called ——, there situate], Vict. c. 97,
[*or to certain heath, gorse, furze, or fern, there grow-*
ing], s. 16.)
the property of [the said] C. D., contrary, &c.



CHAPTER X.

THE LICENCES TO DEAL IN GAME, AND LIABILITIES OF DEALERS THROUGHOUT THE UNITED KINGDOM.

Two licences necessary. We have said, in the Introductory Observations (p. 8), that there are two licences required to be obtained by dealers in game; the first from the justices, and the other from the excise. We will now give the enactments relating thereto, and others as to the liabilities of and penalties on dealers contravening the statutes in the buying and selling of game, which, by the operation of 23 & 24 Vict. c. 90, s. 13, *post*, p. 135, apply to the United Kingdom, previous to which there was no statutory regulation in Scotland or Ireland.

What game. The word "game," it may be observed generally, as here used, must be understood to apply to that defined by 1 & 2 Will. 4, c. 32, s. 2, *ante*, p. 46; and sect. 13 of 23 & 24 Vict. c. 90, *post*, p. 135, imports that definition, as well as applies the close time of England (which differs from those of Scotland and Ireland, see *ante*, p. 9) into Scotland and Ireland, so far as respects *dealing* in game, and supersedes their own definition of "game" and the close season,—which, therefore, is the same throughout the kingdom for the purposes of the enactments in this Chapter and Chapter XI.

1 & 2 Will. 4, c. 32. By 1 & 2 Will. 4, c. 32, s. 18, it is enacted,—
"That the justices of the peace of every county, riding, division, liberty, franchise, city or town shall hold a special session in the division or district for which they usually act in the present year,

Justices to hold a special session yearly for granting li-

between the fifteenth and the thirtieth days of October, and in every succeeding year in the month of July,¹ for the purpose of granting licences to deal in game, of the holding of which session seven days' notice shall be given to each of the justices acting for such division or district,²—and the majority of the justices assembled at such session, or at some adjournment thereof, not being less than two, are hereby authorized (*if they shall think fit*) to grant, under their hands, to any person being a householder or keeper of a shop or stall within such division or district,—and not being an innkeeper or victualler, or licenced to sell beer by retail,³—nor

Persons not
to be li-
censed.

¹ By 2 & 3 Vict. c. 35, s. 4, the time of the holding of this special sessions was altered, for, after reciting this section (18), which is imperative on the justices, it enacts, “That from and after the passing of this act it shall be lawful for the said justices of the peace to hold in their respective divisions or districts a special session for the purpose of granting licences to deal in game, not only in the month of July, but also at any time, and from time to time *as often as they shall see fit* after the said month of July in every year ; and it shall also be lawful for the majority of the said justices (not being less than two), assembled at any such session, or at any adjournment thereof, to grant licences to deal in game, in like manner directed by the said last-recited act [1 & 2 Will. 4, c. 32], and under and subject to the provisions and regulations thereof ;—provided always, that, of the holding of any such special sessions, seven days' notice shall be given to each of the justices acting for the division or district in which such session is intended to be held ;—provided also, that every licence to deal in game, at whatever time the same hath been or shall be granted, shall continue in force from the granting thereof, until the first day of July then next following, and no longer ; anything in the said last-recited act, or in such licence, to the contrary notwithstanding.”

² The mode of convening the special sessions is by a notice from one justice addressed to each of the other justices of the division (7 & 8 Vict. c. 33, s. 7; Oke's “Synopsis,” 8th ed., p. 895). Forms, Oke's “Formulist,” 3rd ed., pp. 571, 593.

³ But by s. 26, *post*, p. 147, an innkeeper or tavernkeeper may without this licence sell game for consumption in his house, if he has procured it from a licensed dealer.

1 & 2 WILL. 4., being the owner, guard or driver of any mail coach or other vehicle employed in the conveyance of the mails of letters, or of any stage coach, stage waggon, van, or other public conveyance,—nor being a carrier or higgler,—nor being in the employment of any of the above-mentioned persons,—a licence according to the form in the schedule (A.) annexed to this Act, empowering the person to whom such licence shall be so granted to buy game at any place from any person who may lawfully sell game by virtue of this act, and also to sell the same at **one** house, shop or stall only, kept by him;⁴

Dealers in game to put up a board.

“Provided that every person, while so licensed to deal in game as aforesaid, shall affix to some part of the outside of the front of his house, shop or stall, and shall there keep, a board, having thereon, in clear and legible characters, his christian name and surname, together with the following words (that is to say), ‘Licensed to deal in game’;

How long licence in force.

“And every such licence granted in the present year shall begin to be in force on the first day of November in the present year, and shall continue in force until the fifteenth day of July, one thousand eight hundred and thirty-two,—and every such licence granted in any succeeding year shall continue in force for the period of one year next after the granting thereof.” [But see second proviso to 2 & 3 Vict. c. 35, p. 133, note 1.]

Proviso as to partners.

Sect. 21.

Sect. 21 enacts,—“That persons being in partnership, and carrying on their business at one house, shop or stall only, shall not be obliged by virtue of this act, to take out more than one licence in any one year to authorize them to deal in game at such house, shop, or stall.”

Licences when to become void.

Sect. 22.

Sect. 22 enacts,—“That if any person licensed by virtue of this act to deal in game, shall, during the period of such licence, be convicted of any offence

⁴ There is no appeal against the justices' decision. *Vide* the form of licence by justices, No. 38, *post*, pp. 141. *Vide* s. 28, *post*, p. 140, for penalty for selling at more than one house, &c.

whatever against this act,⁵ such licence shall there-
upon become null and void.”⁶

<sup>23 & 24 Vict.
Vict. c. 90.</sup>

The 23 & 24 Vict. c. 90,⁷ s. 13, enacts that,—
“All the clauses and provisions of the two several
acts passed respectively in the first and second years
of King William the Fourth, chapter thirty-two,
and the second and third years of her present ma-
jesty, chapter thirty-five, *relating to the granting*
of licences by justices of the peace to deal in game,
and to the holding of special sessions by such jus-
tices in their respective divisions or districts for the
purpose of granting such licences,—and also all the
clauses, provisions and penalties contained in the
said acts or either of them relating to dealers in
game, and to the selling of game, either by or to
such dealers or others,—shall, so far as the same
are consistent with the express provisions of this act,
and as the same are altered or amended by this act,
*extend to and be of full force and effect *in and**
**throughout the whole of the United Kingdom,*⁸—and*
shall be observed, applied and enforced as if the
same, so altered or amended, and made consistent
with the express provisions of this act, had been
herein repeated and specially enacted;

Provisions of
1 & 2 Will. 4,
c. 32, and
2 & 3 Vict.
c. 35, relating
to licences to
deal in game,
to be in force
throughout
the United
Kingdom.
Sect. 13.

“Provided always, that no person shall be au-

No person to
sell game ex-

⁵ The offences by licensed dealers are contained in ss. 4 and 28 of 1 & 2 Will. 4, c. 32, *post*, pp. 137, 139.

⁶ But the person would not be prohibited from applying for or being granted another licence expiring on the first of July following the date of granting it. The “licence to kill game” held by persons convicted of a trespass under *a. 30, ante*, p. 98, is also forfeited by 23 & 24 Vict. c. 90, s. 11, *ante*, p. 71, but the game itself is not forfeited.

⁷ See note⁸, *ante*, p. 59.

⁸ The effect of this section is to apply the provisions of the English act, 1 & 2 Will. 4, c. 32, as to the definition of “game,” and the prohibited times for buying and selling certain birds, to Scotland and Ireland, and, therefore, to licensed dealers as well as others dealing in game or those birds in those parts of the kingdom. The enactments, however, in the Scotch and Irish acts as to *killing and taking* the game there are left untouched by this section; and consequently, as the seasons for taking are different than in England, at some periods of the year it may be there an offence to kill the game and yet none to sell, buy or have it (Paterson, G. L. 199).

23 & 24 Vict. c. 90. authorized to sell game to any licensed dealer unless he shall have taken out a three-pound licence under this act.”⁹

Persons licensed by the justices to deal in game to pay for and obtain a licence under this act.

Sect. 14.

Sect. 14 enacts,—“ Every person who shall have obtained any licence to deal in game from the justices of the peace, under the provisions of the said two several acts [1 & 2 Will. 4, c. 32, and 2 & 3 Vict. c. 35] in the preceding clause mentioned, shall annually, and during the continuance of such licence, and before he shall be empowered to deal in game under such licence, obtain a further licence to deal in game under this act, on payment of the duty hereby charged thereon,¹⁰—and if any person obtaining a licence from the said justices as aforesaid shall purchase or sell or otherwise deal in game before he shall obtain a licence to deal in game under the provisions of this act, he shall forfeit the sum of twenty pounds.”¹¹

⁹ See *ante*, p. 60, as to the grant of this excise licence, and note ²⁶, *ante*, p. 72.

¹⁰ The duty is 2*l* (see s. 2, *ante*, p. 61); is an excise duty, and is under the management of the Commissioners of Inland Revenue (s. 3, *ante*, p. 63). The licence is to be in such form as the commissioners shall provide (s. 16, *ante*, p. 70). *Vide* the form provided by them, No. 39, p. 142.

¹¹ As to the recovery of this penalty see note ¹⁰, *ante*, p. 63, and form of statement of offence No. 40, p. 143. The person dealing without this licence is not liable to be surcharged or proceeded against for the 2*l*. duty on the licence in addition to this penalty (Ass. Taxes, Appeal Case, No. 1068). The buying without a licence is punishable under 1 & 2 Will. 4, c. 32, s. 27, and the selling, under s. 25, *post*, pp. 146, 147.

24 & 25 Vict. c. 91, s. 17. Also by the Inland Revenue Act, 24 & 25 Vict. c. 91, s. 17, which, after reciting that by the section in the text [23 & 24 Vict. c. 90, s. 14] a penalty of twenty pounds is imposed upon any person who shall obtain a licence to deal in game from the justices of the peace under the provisions of certain acts therein referred to [1 & 2 Will. 4, c. 32, and 2 & 3 Vict. c. 35], and who shall purchase or sell or otherwise deal in game before he shall obtain a licence to deal in game under the provisions of the act in this clause first mentioned [23 & 24 Vict. c. 90], enacts,—“ That the said penalty shall be incurred by every person who, under the provisions of the said acts so referred to as aforesaid, *ought to obtain* a licence from

Sect. 15 enacts,—“That no licence to deal in game shall be granted under the provisions of this act to any person, except upon the production of a licence for the like purpose duly granted to him by the justices of the peace, as aforesaid, and then in force;

“And every officer appointed or authorized to grant licences to deal in game under this act shall in each year make out a list, to be kept in his possession, containing the name and place of abode of every person to whom he shall have granted or issued a licence to deal in game under this act,—and such officer shall at all seasonable hours produce such list to any person making application to inspect the same, and shall be entitled to demand and receive for such inspection the sum of one shilling.”

1 & 2 Will. 4, c. 32, s. 4, enacts (*inter alia*),—“That if any person licensed to deal in game by virtue of this act as hereinafter mentioned shall buy or sell,—or knowingly have in his house, shop, stall, possession or control,—any bird of game after the expiration of ten days (one inclusive and the other exclusive) from the respective days in each year on which it shall become unlawful to kill or take such birds of game respectively as aforesaid¹² [*the por-*

1 & 2 Will. 4, c. 32.
the justices of the peace to deal in game, and who shall purchase or sell or otherwise deal in game before he shall obtain a proper excise licence under the provisions of the said first-mentioned act [*i.e.*, 23 & 24 Vict. c. 90], whether he shall have obtained a licence from the said justices or not;—and in any information exhibited for recovery of the said penalty, it shall be sufficient to allege, and upon the trial thereof to prove, that the defendant dealt in game without the licence required by the said first-mentioned act,” [*i.e.* 23 & 24 Vict. c. 90].

¹² The birds of game here mentioned are those defined to be game by s. 2, *ante*, p. 46, except hares, and heath or moor game, and therefore do not include woodcocks, snipes, quails, landrails or conies; this definition and the close time applying, as observed at pp. 132, 135, note ⁸, to the United Kingdom.

In a recent case (*Loome v. Bailey*, 30 L. J. (N. S.) M. C.

Licences to deal in game
c. 90.
only to those
who have obtained li-
cences from
the justices.

Sect. 15.
List of per-
sons licensed
to be kept
for inspec-
tion.

Dealers buy-
ing or having
possession of
game after
ten days from
the expira-
tion of the
season.

Sect. 4 (in
part).

^{1 & 2 Will. 4, c. 32.} 23 & 24 Vict. c. 90, s. 13] shall sell or offer for sale any game at his house, shop or stall, without such board as aforesaid [in s. 18, *ante*, p. 134] being affixed to some part of the outside of the front of such house, shop or stall at the time of such selling or offering for sale,—or shall affix, or cause to be affixed, such board to more than one house, shop or stall,—or shall sell any game at any place other than his house, shop or stall where such board shall have been affixed ;—or if any person not being licensed to deal in game according to this act, shall assume or pretend, by affixing such board as aforesaid, or by exhibiting any certificate, or by any other device or pretence, to be a person licensed to deal in game ;—every such offender, being convicted thereof before two justices of the peace, shall forfeit and pay such sum of money not exceeding ten pounds as to the said justices shall seem meet, together with the costs of the conviction.”¹⁵

*As to buying
and selling
game by the
servants of a
licensed
dealer.*

Sect. 29.

Sect. 29 legalises the business of a licensed dealer being carried on by a servant or agent acting for him on his premises, by enacting,—“ Provided always, that the buying and selling of game by any person or persons employed on the behalf of any licensed dealer in game, and acting in the usual course of his employment, and upon the premises where such dealing is carried on, shall be deemed to be a lawful buying and selling in every case, *where the same would have been lawful if transacted by such licensed dealer himself* :—provided also, that nothing herein contained shall prevent any licensed dealer in game from selling any game which shall have been sent to him to be sold on account of any other licensed dealer in game.”¹⁶

¹⁵ *Vide* Chap. XII. for the recovery of this penalty, and forms Nos. 42—45, pp. 143, 144, for the statements of the offences.

¹⁶ The question arises whether the licensed dealer is liable under the several sections of the 1 & 2 Will. 4, c. 32, for the offences when committed by his servant or agent in his absence. Until a recent decision it was laid down that a man

FORMS.

1 & 2 WILL. 4,
c. 32.

At a special session of the justices of the peace of the ss. Justices' county of — [or riding, &c. as the case may be], licence to deal in game acting for the division of [or otherwise, as the case (Id. s. 18). may be], in the said county, holden at —, in the Schedule A. said —, on the — day of —, in the year ^{in act.}

We, —, being — justices acting for the said —, assembled at the said special session, do hereby authorize and empower A. B. of — [here insert the name, description and place of residence, and if more than one in partnership, say, C. D., of &c., and E. F. of &c., being partners], being a householder [or householders, or keeper or keepers of a shop or stall, as the case may be], to buy game from any person authorized to sell game by virtue of an act passed in the second year of the reign of King William the Fourth, intituled "An Act to amend the Laws in England relative

may be brought within a penal statute by the acts of his agents or servants, according to the maxim,—*qui facit per alium facit per se*,—when the persons doing the acts are proved to be such agents or servants (Paley, 4th ed. pp. 60, 110, 533). But in *Harrison v. Leaper*, 5 Law T. N. S. 640; 26 J. P. 372, 386. Cockburn, C. J., said, that a man was not liable for his servant's criminal acts, the servant being bound to know the law as well as his master, and that there must be shown a *mens rea* in the master (Oke's "Synopsis," 8th ed. p. 103). It is different, however, in cases under the revenue laws. Therefore, unless the licensed dealer is proved to have been in some way privy to the offence of his servant or wife, he cannot be criminally responsible for his agent's acts, merely because of the relationship (see 26 J. P. 386). In default of the master's conviction, the servant would, doubtless, be liable as an unlicensed person under s. 25 for selling, and under s. 27 for buying game; or under s. 28 for pretending to be licensed (p. 140); or under 23 & 24 Vict. c. 90, s. 14, *ante*, p. 136, for dealing in game without a licence; or if the servant is employed *quoad hoc* for the purpose of committing the offence, as an aider and abettor of his master, under 11 & 12 Vict. c. 43, s. 5 (*Wilson v. Stewart*, 8 Law T., N. S. 227; 27 J. P. 293). Proof of the board, required by s. 18, *ante*, p. 134, to be affixed over the dealer's door, being so affixed, will be sufficient evidence that he is licensed in any case for penalties incurred as a licensed person, a higher penalty being imposed on unlicensed persons assuming, by placing such board, to be licensed (see s. 28, p. 140).

to Game;"¹⁷ and we do also authorize and empower the said A. B. [or C. D. and E. F., being partners] to sell at his [or their] house [or shop or stall] any game so bought, provided that the said A. B. [or C. D. and E. F. being partners] shall affix to some part of the outside of the front of his [or their] house [or shop or stall], and shall there keep a board having thereon in clear and legible characters his christian name and surname [or their christian names and surnames], together with the following words, "licensed to deal in game."

The licence will expire on ____.

(Signed) Justice of the Peace.
 Justice of the Peace.

39. Excise
licence to a
dealer.

LICENCE TO DEAL IN GAME.

____, Collection.
____, District.

No. ____.
£2 0 0.

I, ____, of ____, being duly authorized by the Commissioners of Inland Revenue to grant licences to deal in game, under the authority and in pursuance of an act passed in the twenty-fourth year of the reign of her majesty Queen Victoria, intituled "An Act to repeal the Duties on Game Certificates and Certificates to deal in Game, and to impose in lieu thereof Duties on Excise Licences and Certificates for the like purposes," do hereby authorize and empower _____, of _____, in the county of _____, to DEAL IN GAME, he having obtained a licence to deal in game from the justices of the peace for the _____ of _____ in the said county, and having paid the sum of two pounds for this licence. This licence expires on the first day of July, one thousand eight hundred and sixty ____.

Dated and signed this ____ day of ____, 18___.

A. B.

Countersigned by C. D.,
Officer of Excise.

¹⁷ There should be added here,—“ and of the act of the 23rd and 24th years of her present Majesty, chapter ninety.”

Proceed to the asterisk in form No. 6, ante, p. 77, then : 40.* Dealer in A. B. [having theretofore obtained a licence to deal in game dealing therein before obtaining excise licence (23 & 24 Vict. c. 90, s. 14).] from the justices of the peace, under the provisions of the two several acts passed respectively in the first and second years of King William the Fourth, chapter thirty-two, and the second and third years of her present Majesty, chapter thirty-five], unlawfully [and during the continuance of the said licence], did purchase, or sell, or deal in game, to wit, —, before he the said A. B. had obtained a [further] licence to deal in game under the provisions of the said act of the twenty-third and twenty-fourth years of her Majesty, contrary, &c.¹⁸

For that you [or he the said A. B.] on the — day of —, at the parish of —, in the said county, being then licensed to deal in game according to the statutes in that behalf,* unlawfully did buy [or sell] [or knowingly have in your or his house or shop, stall, possession, or control there,] certain birds of game, to wit, two partridges, the day last aforesaid, being after the expiration of ten days from the first day of February last [or as the case may be, stating the commencement of close time], contrary, &c.

41. Dealer selling or having possession of birds of game ten days after season expired (1 & 2 Will. 4, c. 32, s. 4).
42. Dealer buying from an uncertified or unlicensed person (Id. s. 28).

Proceed to the asterisk in the last form, then : 42.* Dealer lawfully did buy [or obtain] certain game, to wit, two partridges, from one E. F., he the said E. F. not being then and there authorized to sell game, for want of a licence to kill game, and for want of a licence to deal in game, contrary, &c.

Proceed to the asterisk in form No. 41, supra, and 43.* Selling then : unlawfully did sell [or offer for sale] certain game, to wit, two partridges, to one E. F. at your [or his] house [or his shop (Id. s. 28).] there situate, without such a board as required by the statute in that behalf being then affixed to any part of the outside of the front of the said house [or shop, or stall], contrary, &c.

¹⁸ If the offender has not a licence from the justices, this form can be adapted to the provisions of 24 & 25 Vict. c. 91, s. 17, ante, p. 136, note, by omitting the portions within brackets [].

44. Affixing board to more than one house, &c.
(Id.) *Proceed to the asterisk* in form No. 41, supra, and then: unlawfully did affix [or cause to be affixed], such board as is by the statute in that behalf required to be affixed to part of the outside of the front of your [or his] house [or shop, or stall] to more than one house [or shop, or stall], to wit, to a house situate in — street, in the parish of — aforesaid, and to another house situate in — street, in the same parish, contrary, &c.*

45. Selling at any other place than where board is affixed
(Id.) *Proceed to the asterisk* in form No. 41, supra, and then: unlawfully did sell certain game, to wit, two partridges, to one E. F. at a certain place, to wit, a house [or as the case may be] in — street, in the parish of — aforesaid, being other than the house [or shop, or stall] where such board as required by the statute in that behalf had been affixed by you [or the said A. B.], contrary, &c.*



CHAPTER XI.

BUYING AND SELLING GAME BY OTHER THAN
LICENSED DEALERS, THROUGHOUT THE UNITED
KINGDOM.

By the joint operation of 1 & 2 Will. 4, c. 32, s. 17, and 23 & 24 Vict. c. 90, ss. 6, 13 (*ante*, pp. 67, 135, notes ⁷ and ⁸), every person who has taken out a 3*l.* excise licence to kill game, shall have power to sell game to a licensed dealer ; and by the operation of s. 13, *ante*, p. 135, the enactments treated of in this chapter apply throughout the united kingdom.

1 & 2 Will. 4, c. 32, s. 4, enacts (*inter alia, the portion of this section as to licensed dealers, being at p. 137*),—“If any person not being licensed to deal in game by virtue of this act, as hereinafter mentioned, shall buy or sell any bird of game after the expiration of ten days (one inclusive and the other exclusive) *from* the respective days in each year on which it shall become unlawful to kill or take such birds of game respectively as aforesaid,—or shall knowingly have in his house, possession or control, any bird of game (except birds of game kept in a mew or breeding-place), after the expiration of forty days (one inclusive and the other exclusive) *from* the respective days in each year on which it shall become unlawful to kill or take such birds of game respectively as aforesaid,—such person shall, on a conviction of any such offence before two justices of the peace, forfeit and pay for every head of game so bought or sold, or found in his house, shop, possession or control, such sum of money, not exceeding one pound, as to the convict-

1 & 2 Will. 4,
c. 32.
Buying or
having pos-
session of
game after
forty days
from expira-
tion of the
season.

Sect. 4 (in
part).

1 & 2 Will. 4, c. 32. ing justices shall seem meet, together with the costs of the conviction.”¹

Penalty for selling game without licence, and on certified persons selling to unlicensed persons.

Sect. 25.

Sect. 25 enacts,—“ That if any person, not having obtained a game certificate, [now an excise ‘ licence to kill game,’ 23 & 24 Vict. c. 90, s. 6, *ante*, p. 67] (except such person be licensed to deal in game according to this act,) shall sell or offer for sale any game to any person whatsoever,²—or if any person authorized to sell game under this act by virtue of a game certificate [now an excise ‘ licence to kill game,’ *Id.*], shall sell or offer for sale any game to any person whatsoever, except a person licensed to deal in game according to this act,³—every such offender shall, on conviction of any such offence before two justices of the peace, forfeit and pay for every head of game so sold or offered for sale such sum of money, not exceeding two pounds, as to the said justices shall seem meet, together with the costs of the conviction.”⁴

¹ *Vide note* ¹², *ante*, pp. 137, 138, which is equally applicable to this portion of section 4, with this distinction, that other than licensed dealers are here allowed to have birds of game in their possession at all times of the year, provided they are kept in a mew or breeding-place. See Chap. XII. for the recovery of the penalty and forms of statements of the offences, Nos. 46, 47, p. 148.

² The offender is not liable to the 2*l.* duty on a dealer’s licence in addition to this penalty (Ass. Taxes, Appeal Case, No. 1068, decided in 1835). There appears now, since 23 & 24 Vict. c. 90, to be no surcharge of duty or double duty (see note ¹⁰, *ante*, p. 63, and s. 14, *ante*, p. 136); but under the latter section and 24 & 25 Vict. c. 91, s. 17, he would be liable to the penalty for dealing without a licence.

³ But he cannot sell game to a licensed dealer unless he has taken out a 3*l.* licence (23 & 24 Vict. c. 90, s. 18, proviso, *ante*, pp. 135, 136).

⁴ *Vide Chap. XII., post*, for the mode of recovering this penalty, and Nos. 48, 49, pp. 148, 149, for the forms of stating the offences. By 5 & 6 Will. 4, c. 20, s. 20, after reciting this section and section 27, enacts,—“ That from and after the passing of this act, every person who shall inform and prosecute or give evidence against any other person or persons for any offence committed, or to be committed, against any of the

5 & 6 Will. 4, c. 20.

Sect. 26 enacts,—“That it shall be lawful for ^{1 & 2 Will. 4,}
^{c. 32.} any innkeeper or tavernkeeper, without any such licence for dealing in game as aforesaid, to sell game for consumption in his own house, such game having been procured from some person licensed to deal in game by virtue of this act, *and not otherwise.* ^{Sect. 26.}

Sect. 27 enacts,—“That if any person, not being licensed to deal in game according to this act, shall buy any game from any person whatsoever, except from a person licensed to deal in game according to this act,—or *bond fide* from a person affixing to the outside of the front of his house, shop or stall, a board purporting to be the board of a person licensed to deal in game—every such offender shall, ^{Sect. 27. I} on conviction thereof before two justices of the peace, forfeit and pay for every head of game so bought such sum of money, not exceeding five pounds, as to the said justices shall seem meet, together with the costs of the conviction.”⁶

said last-recited enactments, shall be indemnified, freed and discharged from all and every penalty and penalties which he or she may have incurred or become liable to under the aforesaid enactments, or any of them, for or by reason of any transaction or dealing which he or she may have had with the person or persons against whom he or she shall so inform and prosecute or give evidence as aforesaid, provided the information or prosecution, which the person so informing and prosecuting as aforesaid shall have instituted, or upon which the person shall give evidence, shall have been commenced before the institution of any proceedings against him or her for the recovery of any such penalty or penalties which he or she may have incurred or become liable to as aforesaid.”

⁵ This section applies strictly to “game,” and would not protect the tavernkeeper who *sells game for consumption* in his own house, which he had procured with his own dog and gun, or had been given to him by a friend (Bell, G. L. 106). No other class of eating or refreshment houses can claim the privilege. The next section, 27, contains the penalty.

⁶ If the purchase is made out of the sporting season, and the game is a bird, see sect. 4, *ante*, p. 145, for the additional penalty incurred. *Vide Chap. XII., post*, for the mode of recovering of this penalty, and No. 50, p. 149, the statement of offence.

1 & 2 WILL. 4, Sect. 28 enacts (*inter alia*),—“If any person not being licensed to deal in game according to this act [and now 23 & 24 Vict. c. 90, *ante*, p. 136 also] shall assume or pretend, by affixing such board as aforesaid [in sect. 18, *ante*, p. 134], or by exhibiting any certificate, or by any other device or pretence, to be a person licensed to deal in game,—such offender being convicted thereof before two justices of the peace, shall forfeit and pay such sum of money, not exceeding ten pounds, as to the said justices shall seem meet, together with the costs of the conviction.”⁷

Sect. 28 (in part).

46. Unlicensed person buying or selling birds of game ten days after lawful time (s. 4).

F O R M S.⁸

For that you [*or he* the said A. B.] on &c., at &c., not then being licensed to deal in game, according to the statutes in that behalf,* unlawfully did buy [*or sell*] certain birds of game, to wit, two partridges, the day last aforesaid, being after the expiration of ten days from the first day of February last [*stating the day on which the season for killing the game in question expired*], contrary, &c.

47. Unlicensed person having possession of same after forty days (Id.)

Proceed to the asterisk in the last form, and then:* unlawfully and knowingly did have in your [*or his*] house [*or shop, or stall, or possession, or control*] there certain birds of game, to wit, two pheasants (the same not being then and there kept in a mew or breeding-place), the day last aforesaid, &c. [*concluding as in the last form*].

48. Uncertified or unlicensed person selling (Id. s. 25).

For that you [*or he* the said A. B.] on &c., at &c., not having obtained and not having a licence to kill game, and not being then a person duly licensed to deal in game according to the statutes in that behalf, unlawfully did sell [*or*

⁷ *Vide* Chap. XII. for recovery of this penalty, and No. 51, p. 149, for the statement of the offence. As to the offence, see 24 & 25 Vict. c. 91, s. 17, in note¹¹, *ante*, p. 136. As to the indemnity of informers who have been concerned in the transaction, see note⁴, *supra*.

⁸ These forms of statements of offences are for use in the general forms in Chap. XII., *post*, p. 162.

offer for sale] certain game, to wit, two partridges, to one 1 & 2 Will. 4, E. F.,
c. 32.

[or if the defendant has not taken out a three-pound licence under 23 & 24 Vict. c. 90, and has sold to a licensed dealer, say here: the said E. F. being a person licensed to deal in game, but you [or he the said A. B.] had not then taken out a three-pound licence under the act in that behalf,] contrary, &c.

For that you [or he the said A. B.] on &c., at &c., being 49. Certified then authorized to sell game by virtue of a licence to kill game, unlawfully did sell [or offer for sale] certain game, to wit, two partridges, to one E. F., he the said E. F. not then and there being a person licensed to deal in game according to the statute in that behalf, contrary, &c.

For that you [or he the said A. B.] on &c., at &c., not 50. Buying then being licensed to deal in game according to the statutes in that behalf, unlawfully did buy certain game, to wit, two pheasants, from one E. F., he the said E. F. not buying game from an unlicensed person (Id. s. 27).

For that you [or he the said A. B.] on &c., at &c., not 51. Unlicensed being then licensed to deal in game according to the statute in that behalf, unlawfully did assume and pretend that you were [or he was] then a person licensed to deal in game, by then and there affixing a board with the words "A. B., licensed to deal in game," to part of the outside of the front of your [or his] house [or shop, or stall] there situate,

[or by then and there exhibiting in the window of your [or his] house [or shop, or stall] there situate, a certain paper purporting to be a certificate of [three] of her Majesty's justices of the peace for the said —, authorizing you [or the said A. B.] to deal in game, which certificate was false and forged], contrary, &c.



CHAPTER XII.

PROCEEDINGS FOR PENALTIES AND IN ACTIONS
UNDER 1 & 2 WILL. 4, C. 32 (ENGLAND).

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1. *Proceedings for Penalties under 1 & 2 Will. 4, c. 32, infra.*
 2. *Proceedings against Persons acting under 1 & 2 Will. 4, c. 32, p. 165.*
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1. PROCEEDINGS FOR PENALTIES UNDER 1 & 2
WILL. 4, C. 32.

Proceedings for penalties under 1 & 2 Will. 4, c. 32. BESIDES the enactments in the 1 & 2 Will. 4, c. 32, there are various provisions in the general act of 11 & 12 Vict. c. 43, regulating summary proceedings before justices of the peace, and in others, which relate to the proceedings for recovery of penalties under the first-named act.

Outline of procedure. Before, however, giving the enactments *in extenso*, it will be convenient to give a succinct statement of the procedure in the order in which the stages occur in practice, with references to the authorities.¹

Information of charge, and time. It is the practice, though not absolutely necessary in this case by the statutes, to take the information in writing, and it must be laid within three calendar months after the commission of the offence (1 & 2 Will. 4, c. 32, s. 41, *post*, p. 155), before a justice

¹ Fuller information must be sought for in the author's larger work, "The Magisterial Synopsis," 8th ed., pp. 91—190.

of the jurisdiction where the offence was committed. It may be laid by *any* person, though he has no interest in the land in respect to which the offence is committed (*Middleton v. Gale*, and *Morden v. Porter*, *ante*, p. 101, note ⁵); but the charge must be deposed to on the oath of a credible witness (6 & 7 Will. 4, c. 65, s. 9, *post*, p. 155, note), who may, now he is competent by 14 & 15 Vict. c. 99 to give evidence, be the informer himself. (Oke's "Synopsis," 8th ed. p. 288, note 125.) *Vide* general form of information, *post*, p. 162. Only one offence and one count—*i. e.* an illegal act done on one day only—can now be inserted in an information (11 & 12 Vict. c. 43, s. 10), although several offenders joining in the commission of the same offence at the same time may be included, as well as those who are charged under 11 & 12 Vict. c. 43, s. 5, with aiding, abetting, counselling, or procuring the commission of it, although the offence of the latter is in another jurisdiction. Minors and married women, and indeed all females, can be convicted of any offence punishable summarily. Under each chapter of this work is given forms of statements of the offences described in it; and with respect to the date of committing an offence, it may be stated, if not known correctly, to have been between such a day and such a day, for proof of one of the days within the prescribed period for laying the information will suffice (*Onley v. Gee*, 30 L. J. (N. S.) M. C. 222; 4 Law T., N. S. 338; 25 J. P. 342); and so as to the parish in which it was committed, if it was in fact committed within the justice's jurisdiction. (11 & 12 Vict. c. 43, s. 9; Oke's "Synopsis," 8th ed. pp. 101—109.)

A summons is to be issued to the party charged, which may be served personally or at his abode, or a warrant may be issued to apprehend him if he is likely to abscond (1 & 2 Will. 4, c. 32, s. 41, *post*, p. 155), or if the justice thinks fit (11 & 12 Vict. c. 43, s. 2). *Vide* forms of summons and warrant, *post*, pp. 162, 163.

The process
to issue to
defendants.

**Remanding
or bailing
defendants
till hearing,
&c.**

The 11 & 12 Vict. c. 43, contains various provisions as to remanding or bailing defendants before or during the hearing of a case, on account of variances between the information and the evidence,—on his apprehension before the time of hearing and complainant not in attendance,—and on adjournments (11 & 12 Vict. c. 43, ss. 3, 9, 13, 16; Oke's "Synopsis," 8th ed. pp. 117, 118).

**Summons
to witnesses.**

Any justice may issue a summons to any person to appear to give evidence on the hearing of the information, who is liable to a penalty of 5*l.* for nonattendance, or refusing to be examined (1 & 2 Will. 4, c. 32, s. 40, *post*, p. 156). See 11 & 12 Vict. c. 43, s. 7; Oke's "Synopsis," 8th ed. p. 119; and forms, Oke's "Formulist," 3rd ed. pp. 30—32.

**Hearing of
information.**

The justices hearing the information must be of the county, or other jurisdiction where the offence was committed, but need not be the same who received the information. The number necessary to convict is shown in the section of the act creating the offence, but a metropolitan police magistrate, the lord mayor or an alderman of London, and a stipendiary magistrate, may act alone (11 & 12 Vict. c. 43, ss. 33, 34; 21 & 22 Vict. c. 78, s. 1). The hearing must be in open court, and either party may have counsel or attorney (11 & 12 Vict. c. 43, s. 12), and in default of defendant's appearance, it may be *ex parte*, on proof of due service of summons (1 & 2 Will. 4, c. 32, s. 41; 11 & 12 Vict. c. 43, s. 13). The informer is a competent witness for himself or the defendant, but not so the defendant in any case of summary conviction, it being a *criminal* proceeding (14 & 15 Vict. c. 99, s. 3; *Cattell v. Ireson*, 27 L. J. (N. S.) M. C. 167; 31 Law T. 80; 22 J. P. 672; *Parker v. Green*, 31 L. J. (N. S.) M. C. 133; Oke's "Synopsis," 8th ed. p. 60). Matters of defence or exception must be proved by the defendant (1 & 2 Will. 4, c. 32, s. 42, *post*, p. 158). A claim of right, which mostly arises on charges of trespass made under

1 & 2 Will. 4, c. 32, s. 30, ousts the justices' jurisdiction to determine an information, upon which see the cases given in note⁴, *ante*, p. 100, under that section. The testimony of the witnesses is entirely for the consideration and judgment of the justices, who are placed in the situation of a jury; and it is laid down that, in point of law, the evidence will support a conviction by a magistrate, if there was such evidence as would have been sufficient to have been left to a jury (Oke's "Synopsis," 8th ed. pp. 133, 134; per *Williams*, J., in *Brown v. Turner*, 32 L. J. (N. S.) M. C. 106; 27 J. P. 103; S. C. *Reg. v. Turner*, 7 Law T. N. S. 683). In all cases but that of trespass, there must be evidence of a guilty knowledge and intention in the person charged with the offence (Oke's "Synopsis," 8th ed. p. 133, note 28). On dismissal of an information costs may be ordered to be paid by the informer to the defendant (11 & 12 Vict. c. 43, ss. 14, 18). The defendant cannot be convicted of any other offence than the precise one for which he is summoned to answer (*Martin v. Pridgeon*, 28 L. J. (N. S.) M. C. 179; 33 Law T. 119; 23 J. P. 630; *Soden v. Cray*, 7 Law T. N. S. 324; 26 J. P. 743). Each defendant, where there are several joining in the offence, is liable to the full penalty, upon the well known principle of the common law that all are principals in petty misdemeanors (see observations and cases under s. 23, *ante*, p. 117). Cumulative imprisonment may be ordered by separate commitments if a defendant is convicted at the same time of two or more offences under different convictions (11 & 12 Vict. c. 43, s. 25). Costs may be ordered in all cases against the defendant (Id. s. 18).

1 & 2 Will. 4, c. 32, s. 39 (*post*, p. 157), provides a form of conviction, which, by s. 43, is to be returned to the sessions; but the form I 2 in the 11 & 12 Vict. c. 43, is now the correct one to be used (*Reg. v. Hyde*, 21 L. J. (N. S.) M. C. 94; 16 J. P. 67; overruling *Ex parte Hyde*, 15 Jur. 803). See the latter form, *post*, p. 163. It should

include all the defendants convicted at the same time of the same offence.

Enforcing the conviction.

1 & 2 Will. 4, c. 32, s. 38 (*post*, p. 158), provides that time may be allowed by the convicting justices to the defendant for payment of the penalty and costs, and that in default of payment the defendant may be committed to prison by the warrant of any justice of the same jurisdiction, for not exceeding two calendar months, where the penalty only is under 5*l.*, and for not exceeding three calendar months in other cases; and by 11 & 12 Vict. c. 43, s. 23, in all cases the costs of the defendant's conveyance to prison may be ordered to be paid by him.

Application of penalties.

One moiety of all penalties is to go to the informer, and the other moiety to the overseer, &c., of the parish, &c., in which the offence was committed (1 & 2 Will. 4, c. 32, s. 37; 5 & 6 Will. 4, c. 20, s. 21, *post*, pp. 159, 160, note); and it is the duty of the clerk to the convicting justices to receive and apply the penalties accordingly (11 & 12 Vict. c. 43, s. 31; and see 22 Vict. c. 32, in note ¹⁰, *post*, p. 159).

Appeal, &c., from decision of justices.

The conviction is not liable to be removed by certiorari (1 & 2 Will. 4, c. 32, s. 45, *post*, p. 161), except for want or excess of jurisdiction (*Reg. v. Hyde*, 21 L. J. (N. S.) M. C. 94; 16 J. P. 67; Paley, 4th ed., 357, 358). By s. 44 (*post*, p. 160), any party convicted may appeal to the quarter sessions, on giving notice thereof and of the cause thereof to the informer within three days, and seven days before the sessions, and remaining in custody or entering into a recognizance to prosecute the appeal. The provisions of 12 & 13 Vict. c. 45, s. 3, to the end, will apply to such an appeal (Oke's "Synopsis," 8th ed. pp. 173—181). The defendant has also another mode of appeal under 20 & 21 Vict. c. 43, *i.e.*, to one of the superior courts, if the justices' determination rests on a question of law; and the informer has this latter resort, too, if he is dissatisfied with the justice's decision in dismissing his information; but

if he appeals under 20 & 21 Vict. c. 43, he is, by s. 14, to be taken as having abandoned his appeal to the quarter sessions (Oke's "Synopsis," 8th ed. pp. 182—190).

The enactments of the 1 & 2 Will. 4, c. 32, relative to procedure are as follows :—

Sect. 41 enacts,—“That the prosecution for every offence punishable upon summary conviction by virtue of this act shall be commenced within three calendar months after the commission of the offence;

“And that where any person shall be charged on the oath of a credible witness² with any such offence before a justice of the peace, the justice may summon the party charged to appear before himself, ^{Time for proceedings, and mode of enforcing the appearance of offenders.} Sect. 41.

or any one or two justices of the peace, as the case may require, at a time and place to be named in such summons;

“And if such party shall not appear accordingly, ^{May hear ex parte.} then (upon proof of the due service of the summons by delivering a copy thereof to the party, or by delivering such copy at the party's usual place of abode to some inmate thereat, and explaining the purport thereof to such inmate), the justice or justices may either proceed to hear and determine the case in the absence of the party, or may issue his or their warrant for apprehending and bringing such party before him or them, as the case may be;

“Or the justice before whom the charge shall be made may, if he shall have reason to suspect from information upon oath that the party is likely to abscond, issue such warrant in the first instance, without any previous summons;”³

² *I. e.* a person competent to give evidence.

³ *Vide ante*, pp. 150, 151, as to the information. By 6 & 7 Will. 4, c. 65, s. 9, after reciting this section, enacts,—“That upon any information made or exhibited before a justice of the peace of any such offence as aforesaid, it shall not be necessary that the charge contained in such information should be made on the oath of the informer or prosecutor in such case ;—provided, that before any proceedings shall be had or taken upon such information, either for sum-

1 & 2 WILL. 4,
c. 32.

Power to
summon
witnesses.

Penalty for
disobedience
of summons,
&c.

Sect. 40.

Sect. 40 enacts,—“That it shall be lawful for any justice of the peace to issue his summons requiring any person to appear before himself, or any one or two justices of the peace, as the case may require, for the purpose of giving evidence touching any offence against this act,⁴—and if any person so summoned shall neglect or refuse to appear at the time and place appointed by such summons, and no reasonable excuse for his absence shall be proved before the justice or justices then and there present,—or if any person appearing in obedience to such summons shall refuse to be examined on oath touching any such offence by the justice or justices then and there present,—every person so offending shall, on conviction thereof before the said justice or justices, or any other justice or justices of the peace, forfeit and pay such sum of money, not exceeding five pounds, as to the convicting justice or justices shall seem meet.”⁵

moning the party accused or compelling his appearance to answer the same, the charge contained in such information shall be deposed to on the oath of some other person or persons being a credible witness or witnesses” [*i.e.*, a competent person to give evidence. The charge should be deposed to, if possible, at the time of preferring the information, or shortly after]. The 14 & 15 Vict. c. 99, s. 2, having made the informer competent to give evidence, it is the practice for him to depose on oath to the offence, if no other person is ready to do so on the commencement of the proceedings; and by the repealing operation of the 11 & 12 Vict. c. 43, sect. 2 of which authorizes a justice to issue a warrant instead of a summons if he think fit, “a justice may issue such warrant in the first instance without it being deposed to that the party is likely to abscond.” *Vide* forms of information, summons and warrant, *post*, pp. 162, 163.

⁴ This, it is apprehended, can only be done *after* an information has been properly preferred for the offence. It applies to witnesses for either party.

⁵ This will be recovered as other penalties, by information, summons, &c. 11 & 12 Vict. c. 43, s. 7, gives a similar power, specially in respect to *either* party, and provides for the service of the summons, which this section does not, and tender of the witness’s expenses. See Oke’s “Synopsis,” 8th ed., pp. 119 to 122.

Sect. 39 enacts,—“ That the justice or justices of ^{1 & 2 Will. 4,}
 the peace (as the case may require) before whom ^{c. 32.}
 any person shall be summarily convicted of any ^{Form of} conviction.
 offence against this act may cause the conviction to
 be drawn up according to the following form of
 words, or in any other form of words to the same ^{Sect. 39.}
 or the like effect ;⁶ (that is to say,) ”

— } Be it remembered, that on the — day of —, No. 52.
 to wit. } in the year of our Lord —, at — in the
 county of — [or riding, division, franchise, liberty, city,
 &c., as the case may be], A. O. is convicted before me, J. P.
 one [or us J. P. and J. J. P. two, as the case may require,]
 of his majesty’s justices of the peace for the said county [or
 riding, &c.], for that he the said A. O. did on —, at —,
 kill [or take] game, [or did use a dog, &c. for the purpose
 of killing game], he the said A. O. not being authorized so
 to do for want of a game certificate, contrary to the statute
 in such case made and provided [or did, here specify any
 other offence, and the time and place when and where the
 same was committed, as the case may be]; and I [or we], do
 adjudge that the said A. O. shall for the said offence forfeit
 the sum of — [or we do adjudge that the said A. O.
 shall for the said offence forfeit the sum of —, being after
 the rate of — for every head of game so, &c. or for every
 egg so, &c.], and shall forthwith pay the said sum, together
 with the sum of — for costs; and that, in default of im-
 mediate payment of the said sums, he the said A. O. shall
 be imprisoned [or imprisoned and kept to hard labour] in the — of —,
 for the space of —, unless the said sums shall be sooner paid: and I [or we] order that the said
 sums shall be paid by the said A. O. on or before the —
 day of —, and in default of payment on or before that
 day I [or we] adjudge the said A. O. to be imprisoned [or
 imprisoned and kept to hard labour] in the — of —,
 for the space of —, unless the said sums shall be sooner paid;
 and I [or we] direct that the said sum of — (i. e.
 the penalty) shall be paid to —, being one of the over-
 seers of the poor of, &c., to be by him applied according to

⁶ The correct form now to be used is I 2, in the 11 & 12 Vict. c. 43, given at *post*, p. 163. It is a better form, and does not contain the application of the penalty, but simply adjudges the forfeiture of a sum “to be paid and applied according to law.” See *Reg. v. Hyde, ante*, p. 153.

1 & 2 Will. 4, the directions of the statute in such case made and provided; c. 32. and I [or we] order that the said sum of — for costs shall be paid to — (the complainant).

Given under my hand [or our hands] the day and year first above mentioned.

J. P.
[or J. P. and J. J. P.]

Prosecutor
not required
to prove a
negative.

Sect. 42.

Convictions
to be re-
turned so
sessions.

Sect. 43.

Time for
payment of
penalties,
and scale of
imprison-
ment for non-
payment.

Sect. 38.

Sect. 42 enacts,—“That it shall not be necessary in any proceeding against any person under this act, to negative by evidence any certificate, licence, consent, authority or other matter of exception or defence ;—but that the party seeking to avail himself of any such certificate, licence, consent, authority or other matter of exception or defence, shall be bound to prove the same.”⁷

Sect. 43 enacts,—“That the justice or justices of the peace before whom any person shall be convicted of any offence punishable upon summary conviction under this act shall transmit every such conviction to the next court of general or quarter sessions of the peace for the county, riding, division, liberty, franchise, city or town wherein the offence shall have been committed, there to be kept by the proper officer among the records of the court.”⁸

Sect. 38 enacts,—“That the justice or justices of the peace by whom any person shall be summarily convicted and adjudged to pay any sum of money for any offence against this act, together with costs, may adjudge that such person shall pay the same either immediately or within such period as the said justice or justices shall think fit,—and that in de-

⁷ 11 & 12 Vict. c. 43, s. 14, contains a similar general enactment (Oke's “Synopsis,” 8th ed., p. 131). As to the necessity for negating exceptions in an information, &c., see Id. p. 109.

⁸ 11 & 12 Vict. c. 43, s. 14, contains a similar general requirement. A mandamus lies against justices to compel them to return convictions, but not against their clerk, the duty of returning them being on them (*Ex parte Hayward*, 32 L. J. (N. S.), M. C. 89; 27 J. P. 102; S. C. *Ex parte Clerk of Peace for Rochester*, 7 Law T., N. S. 622.)

fault of payment at the time appointed, such person ^{1 & 2 Will. 4,}
 shall be imprisoned in the common gaol or house ^{c. 32.}
 of correction (with or without hard labour⁹), as to
 the justice or justices shall seem meet, for any term
 not exceeding two calendar months, where the
 amount to be paid, exclusive of costs, shall not
 amount to five pounds,—and for any term not ex-
 ceeding three calendar months in any other case,—
 the imprisonment to cease in each of the cases afore-
 said upon payment of the amount and costs.”¹⁰

Sect. 37 enacts,—“That every penalty and for-
 feiture for any offence against this act (the applica-
 tion of which has not been already provided for
 [which refers to s. 20, now repealed by 23 & 24
 Vict. c. 90, s. 1, ante, pp. 59, 60,] shall be paid to
 some one of the overseers of the poor, or to some
 other officer (as the convicting justice or justices
 may direct) of the parish, township or place in which Sect. 37.
 the offence shall have been committed, to be by such
 overseer or officer paid over to the use of the general
 rate of the county, riding or division in which such
 parish, township or place shall be situate, whether
 the same shall or shall not contribute to such general
 rate;¹¹ and no inhabitant of such county, riding or

⁹ It will not be necessary to state the imprisonment to be “without hard labour,” when not imposed (*Ex parte Thompson*, 30 L. J. (N. S.) M. C. 19; 3 Law T. (N. S.), 318; 24 J. P. 805).

¹⁰ By 11 & 12 Vict. c. 43, s. 29, any one justice of the same jurisdiction as the convicting justice or justices may enforce a conviction by commitment; which may now, by s. 23, include the costs of conveying the offender to prison (Oke’s “Synopsis,” 8th ed., pp. 161, 168). The offender can be liberated on payment of the amount to the gaoler if he be in prison, or to the constable if he be not lodged there; and the constable or gaoler must pay the same to the clerk to the justices (11 & 12 Vict. c. 43, ss. 28, 31), but the crown may remit any penalty under this act and extend the royal mercy to persons imprisoned for non-payment of them (22 Vict. c. 32; Oke’s “Synopsis,” 8th ed., p. 157). See note ¹¹, *infra*, and form of commitment, *post*, p. 164.

¹¹ This application of the penalty has been altered by 5 & 6 Will. 4, 6 Will. 4, c. 20, s. 21, which, after reciting this section, and c. 20, s. 21.

1 & 2 Will. 4, c. 32. division shall be deemed an incompetent witness in any proceeding under this act by reason of the application of such penalty or forfeiture to the use of the said general rate as aforesaid.”¹²

Appeal against convictions of justices to quarter sessions.

Sect. 44.

Notice of appeal and recognizance.

Sect. 44 enacts,—“That any person who shall think himself aggrieved by any summary conviction in pursuance of this act may appeal to the justices at the next general or quarter sessions of the peace to be holden, not less than twelve days after such conviction, for the county, riding, division liberty, franchise, city or town, wherein the cause of complaint shall have arisen [*i. e.*, wherein the conviction was made];¹³

“Provided that such person shall give to the complainant a notice in writing of such appeal, and of the cause and matter thereof, within three days after such conviction, and seven clear days at the least before such sessions,¹³ and shall also either re-

5 & 6 Will. 4, c. 20, s. 21. that “it is expedient to reward the persons who shall prosecute offenders against the said act,” enacts,—“That from and after the passing of this act one moiety of all such penalties and forfeitures as by the said last-recited act are directed to be paid and applied as aforesaid, shall go and be paid to the person who shall inform and prosecute for the same, and the other moiety thereof only shall go and be paid to such overseer or officer as aforesaid, and be by him applied in the manner by the said last-recited act directed;—and the form of conviction set forth in the said last-recited act (*ante*, p. 157), shall, so far as relates to the distribution of the penalty for which judgment shall be given, be made according to the fact and conformably with the direction given by this act as to such distribution.” The clerk to the convicting justices is now made responsible for the proper application of all penalties, and to whom they must be paid by constables and others (11 & 12 Vict. c. 43, s. 31; Oke’s “Synopsis,” 8th ed., p. 170). Formerly where the offence was committed in an extra-parochial place the informer was entitled to the whole penalty (*Rex v. Wyatt*, 2 Ld. Raym. 1478), but such a place is now a parish for this and other purposes (20 Vict. c. 19, s. 1).

¹² This was remedied by 6 & 7 Vict. c. 85; and see 11 & 12 Vict. c. 43, s. 15, and 14 & 15 Vict. c. 99.

¹³ As to the computation of the time, see Oke’s “Synopsis,” 8th ed., pp. 175, 176. See further note¹⁴, *infra*.

main in custody until the sessions, or within such ^{1 & 2 Will. 4,}
 three days enter into a recognizance, with a suffi-^{c. 32.}
 cient surety, before a justice of the peace, con-
 ditioned personally to appear at the said sessions,
 and to try such appeal, and to abide the judgment
 of the court thereupon, and to pay such costs as
 shall be by the court awarded ;—and upon such
 notice being given, and such recognizance being
 entered into, the justice before whom the same shall
 be entered into shall liberate such person, if in cus-
 tody ;¹⁴

“ And the court at such sessions shall hear and
 determine the matter of the appeal, and shall make
 such order therein, with or without costs to either
 party, as to the court shall seem meet,—and in case
 of the dismissal of the appeal, or the affirmation
 of the conviction, shall order and adjudge the offender
 to be dealt with and punished according to the con-
 viction, and to pay such costs as shall be awarded,
 and shall, if necessary, issue process for enforcing
 such judgment.”¹⁴

Sect. 45 enacts,—“ That no summary conviction No certio-
 in pursuance of this act, or adjudication made on rari, &c.
 appeal therefrom, shall be quashed for want of form,
 or be removed by certiorari or otherwise into any
 of his majesty’s superior courts of record ;¹⁵—and Sect. 45.
 that no warrant of commitment shall be held void
 by reason of any defect therein, provided it be therein

¹⁴ See the observations and other acts having reference to appeals referred to at p. 154. If the conditions of the recognizance are not fulfilled and the appeal prosecuted, the recognizance must be estreated by the quarter sessions, and the sheriff will thereupon levy the amount on the goods of the parties bound. The order for the costs of the appeal is enforced by the sessions under 12 & 13 Vict. c. 45, s. 5; Oke’s “ Synopsis,” 8th ed., pp. 180, 181).

¹⁵ This provision does not bind the crown or the prosecu-
 tor, or apply to cases where there has been a want or an
 excess of jurisdiction, or where the convicting justices, or one
 of them, is interested in the case (Oke’s “ Synopsis,” 8th
 ed., p. 43; Locke, G. L. 67).

1 & 2 Will. 4, c. 32. alleged that it is founded on a conviction, and there be a good and valid conviction to sustain the same."

F O R M S.¹⁶

53. General information for any offence under 1 & 2 Will. 4, c. 32.

Be it remembered, that on this — day of —, to wit, § in the year of our Lord —, C. D. of the parish of — in the county of — [gamekeeper], in his proper person cometh before the undersigned, one of her Majesty's justices of the peace in and for the said county, and now giveth me the said justice to understand and be informed, that one A. B. of the parish of — in the said county [labourer], within the space of three calendar months now last past, to wit, on the — day of —, at the parish of — in the county aforesaid, unlawfully did [here insert a description of the offence as in the forms given in the preceding chapters under the enactments creating the offences], contrary to the statute 1 & 2 Will. 4, cap. 32, section [30], whereby and by force of the said statute the said A. B. hath forfeited a sum of money not exceeding — pounds, to be paid and applied according to law: and thereupon the said informant prayeth that the said A. B. may be caused to appear to answer the said information, and make Deposition of his defence thereto: And the said informant [or E. F. of witness.

C. D.

E. F.

Exhibited and sworn before me the day and year first above written.

J. S.

54. Summons to the defendant (adapted from schedule A to 11 & 12 Vict. c. 43).

To A. B. of —, labourer.

Whereas information hath this day been laid before the undersigned, [one] of her majesty's justices of the peace in and for the said [county] of —, for that you [here state shortly the matter of the information].* And whereas

¹⁶ These forms are taken from Oke's "Magisterial Formulist," 3rd ed.

after the exhibiting of the said information, but before any proceeding had or taken thereupon, the matter and charge contained in the said information was duly deposed to before me, the said justice, upon the oath of the said informant [*or E. F. of &c.*], being a credible witness in that behalf: * These are therefore to command you, in her majesty's name, to be and appear on ——, at —— o'clock in the forenoon, at ——, before such justices of the peace for the said county as may then be there, to answer to the said information, and to be further dealt with according to law.

Given under my hand and seal, this —— day of ——, in the year of our Lord ——, at ——, in the [county] aforesaid.

J. S. (L.S.)

[These will be in the General Forms in Sched. B. and C. 55. Warrant in 11 & 12 Vict. c. 43, inserting the matter between the asterisks * * as in the last form.]

where the summons is disobeyed, or a warrant in the first

— } Be it remembered, that on the —— day of ——, instance.
to wit, { in the year of our Lord ——, at ——, in the said 56. Convio-
[county], A. B. is convicted before the undersigned, [one] tion (Sche-
of her majesty's justices of the peace for the said [county], & 12 Vict.
for that [he the said A. B. &c. stating the offence, and the c. 43, ante,
time and place when and where it was committed], and I p. 153).
adjudge the said A. B. for his said offence to forfeit and pay
the sum of —— [stating the penalty],* to be paid and ap-
plied according to law, and also to pay to the said C. D. the
sum of —— for his costs in this behalf: and if the said
several sums be not paid forthwith [or "on or before —
next"] I adjudge the said A. B. to be imprisoned in the
[house of correction] at ——, in the said [county], [and
there to be kept to hard labour] for the space of ——, unless
the said several sums [and the costs and charges of convey-
ing the said A. B. to the said house of correction] shall be
sooner paid.

Given under my hand and seal the day and year first
above mentioned, at ——, in the [county] aforesaid.

J. S. (L.S.)

* The following additions will be necessary to be inserted here in some cases after the aggregate penalty is stated:—

under s. 3,—“being after the rate of —— for every head of game so killed, or taken, by the said A. B. as aforesaid.”

- under s. 4,*—“being after the rate of — for every head of game so bought, or sold, or found, as aforesaid.”
- under s. 12,*—“being the sum of — for such pursuit as aforesaid, after the rate of — for every head of game so killed, or taken, as aforesaid.”
- under s. 24,*—“being after the rate of — for every egg so taken, or destroyed, or had, by the said A. B. as aforesaid.”
- under s. 25,*—“being after the rate of — for every head of game so sold, or offered for sale, as aforesaid.”
- under s. 27,*—“being after the rate of — for every head of game so bought as aforesaid.”

To the constable of —, and to the keeper of the [house of correction] at — in the said [county of —].

57. Commitment of defendant on nonpayment of penalty and costs (adapted from schedule O 1 to 11 & 12 Vict. c. 43).

Whereas A. B., late of — [labourer], (hereinafter called “defendant,”) was on this day duly convicted before the undersigned, [one] of her majesty’s justices of the peace in and for the said [county], for that [*stating the offence as in the conviction*]; and it was thereby adjudged that the said defendant for his said offence should forfeit and pay the sum of [£c., as in the conviction], and should pay to the said C. D. the sum of — for his costs in that behalf; and it was thereby further adjudged, that if the said several sums should not be paid [forthwith], the said defendant should be imprisoned in the [house of correction] at —, in the said [county] [*and there kept to hard labour*] for the space of —, unless the said several sums [and the costs and charges of conveying the said defendant to the said house of correction] should be sooner paid: And whereas the time in and by the said conviction appointed for the payment of the said several sums hath elapsed, but the said defendant hath not paid the same or any part thereof, but therein hath made default: These are therefore to command you the said constable of — to take the said defendant, and him safely to convey to the [house of correction] at — aforesaid, and there to deliver him to the keeper thereof, together with this precept; and I do hereby command you the said keeper of the said [house of correction] to receive the said defendant into your custody in the said [house of correction], there to imprison him [*and keep him to hard labour*] for the space of —, unless the said several sums [and the costs and

charges of conveying him to the said *house of correction* amounting to the further sum of ——] shall be sooner paid; and for your so doing this shall be your sufficient warrant.

Given under my hand and seal this —— day of ——, in the year of our Lord ——, at —— in the [county] aforesaid.

J. S. (L.S.)

¶ If this commitment be not made by the convicting justice there should be added after the signature of the justice,—“ One of her majesty’s justices of the peace in and for the county of ——;” the name of the convicting justice being inserted at the commencement in the recital of the conviction.

Vide a commitment of several offenders, Oke’s “Magisterial Formulist,” 3rd ed., pp. 50, 51.

2. PROCEEDINGS AGAINST PERSONS ACTING UNDER 1 & 2 WILL. 4, c. 32.

The following enactment refers to the protection 1 & 2 Will. 4, c. 32. of gamekeepers and owners and occupiers of land, as well as justices acting under the powers given to them by the 1 & 2 Will. 4, c. 32 only.

As to actions of trespass by owners, &c., against persons pursuing &c., game, &c., that subject is treated of, *ante*, pp. 108—114.

1 & 2 Will. 4, c. 32, s. 47, “For the protection ^{Venue, &c.} in proceedings against persons acting under this act,” enacts,—“That all actions and prosecutions to be commenced *against any person for anything done in pursuance of this act*¹⁷ shall be laid and tried in

¹⁷ According to the decisions in the cases upon the words “anything done in pursuance of this act,” and other similar language in acts of parliament, such words are to be construed liberally. It has been frequently observed by the courts that the notice which is directed to be given to officers and others before actions are brought against them, would be of no use to them in cases where they have acted within the *strict line of their duty*, when they need no protection; but was only required for the purpose of protecting them in those cases where they intended to act within it, but by *mistake* exceeded it. As to actions against justices see now 11 & 12 Vict. c. 44; Oke’s “Synopsis,” 8th ed., pp. 30—37.

1 & 2 WILL. 4, the county where the fact was committed, and shall be commenced within six calendar months after the fact committed,¹⁸ and not otherwise ;—and notice in writing of such action, and of the cause thereof, shall be given to the defendant one calendar month at least before the commencement of the action ;

Sect. 47.
Tender of amends.

“ And in any such action the defendant may plead the general issue, and give this act and the special matter in evidence at any trial to be had thereupon ;—and no plaintiff shall recover in any such action if tender of sufficient amends shall have been made before such action brought, or if a sufficient sum of money shall have been paid into court after such action brought, by or on behalf of the defendant.”

¹⁸ The mode of computing a calendar month, is from a date in one to the same date in the next month, only one of the days being included, as, for instance, if the act complained of took place on the 28th, the 28th of the next month is excluded (*Freeman v. Reed*, 8 Law T., N. S. 458).



CHAPTER XIII.

POACHING BY NIGHT, THROUGHOUT THE UNITED KINGDOM.

THE 1 & 2 Will. 4, c. 32, applies, with the exception ^{9 Geo. 4, c.}^{69.} of authorizing the apprehension of night trespassers (see s. 36, *ante*, p. 105), only to day poaching in England ; the 9 Geo. 4, c. 69, to night poaching throughout the United Kingdom ; the English act 11 & 12 Vict. c. 29, s. 5, and the Scotch Act, 11 & 12 Vict. c. 30, s. 4, prohibit the use of fire-arms by night for taking or killing hares or other game ; the 27 Geo. 3, c. 35, s. 4, as to destroying quails and landrails in Ireland in the night, and the Poaching Prevention Act, 25 & 26 Vict. c. 114, Chap. XVI., to the day as well as the night.

The 9 Geo. 4, c. 69, s. 12, enacts,—“That for the purposes of this act the night shall be considered and is hereby declared to commence at the expiration of the first hour after sunset, and to conclude at the beginning of the last hour before sunrise.”¹

Sect. 13 enacts,—“That for the purposes of this act the word ‘game’ shall be deemed to include hares, pheasants, partridges, grouse, heath or moor game, black game and bustards.”²

Sect. 1, reciting 57 Geo. 3, c. 90; that “the prac- Recital.

¹ *Vide note* ², *ante*, p. 98. The precise hour laid as the offence need not be proved, if it be shown that an offence was in fact committed within these prescribed hours (*R. v. Tomlinson*, 7 C. & P. 183; and see case of *Reg. v. Sanderson*, note ¹³, p. 174).

² This definition is the same as in 1 & 2 Will. 4, c. 32, s. 2, *ante*, p. 46. Woodcocks, snipes, quails and landrails are not included in the act 9 Geo. 4, c. 69.

9 Geo. 4, c.
69.

Sect. 1.

Persons
taking or
destroying
game by

tice of going out by night for the purpose of destroying game has nevertheless increased very much of late years,³ and has in very many instances led to the commission of murder and of other grievous offences;” and that “it is expedient to repeal the said recited act, and to make more effectual provisions than now by law exist for repressing such practice,”—enacts, “That the said recited act shall be and the same is hereby repealed, except so far as the same repeals any other acts:—

“And if any person shall, after the passing of this act, by night, *unlawfully take*⁴ or destroy any game or rabbits in any land, whether open or inclosed,

³ The act was passed on the 19th July, 1828, and is intituled “An Act for the more effectual Prevention of Persons going armed by Night for the Destruction of Game.”

⁴ See note¹, *supra*, upon definition of “night.” The word “take” here means catching, as in a wire, and not a taking away as in larceny (*Rex v. Glover*, Russ. & Ry. C. C. 269). It is said that the 24 & 25 Vict. c. 96, s. 17, Chap. XV., which is a re-enactment of 7 & 8 Geo. 4, c. 29, s. 30 (then a prior enactment to this of 9 Geo. 4, c. 69), being now the more recent statute, repeals 9 Geo. 4, c. 69, s. 1, as to *hares and rabbits* killed by night, and that this offence is now made a misdemeanor instead of an offence punishable summarily; other game than hares being still an offence under 9 Geo. 4, c. 69 (Paterson, G. L. 91, 111). The writer differs from this view, and thinks that the act, 24 & 25 Vict. c. 96, s. 17, has made no alteration, but that it applies to “any warren or ground lawfully used for the breeding or keeping of hares or rabbits,” and 9 Geo. 4, c. 69, to *other lands*; so that the two enactments may well run together.

“Rabbits” are omitted in the second offence in this section, and therefore it is no offence under this section to be on land for the purpose of taking them; neither is a dog mentioned: but if rabbits are in a warren or breeding-ground, see 24 & 25 Vict. c. 96, s. 17, Chap. XV. A tenant would be liable for “unlawfully taking” game, if it be reserved to the landlord; but not for *entering or being* on the land for that purpose, although in Scotland there is a decision to the contrary (*Smith v. Young*, 1856, 28 Sc. Jur. 338; 2 Irvine, 402), which is not very clear; but the Scotch judges hold, generally, a different opinion upon the Day Poaching Act (Chap. XVIII. Sect. 8). The words “enter or be” mean “enter and be,” as decided under 1 & 2 Will. 4, c. 32, s. 30, *ante*, p. 99, note 4. The close in which the offence is committed must be particularized (*R. v. Crick*, 5 Car. & P. 508; *Reg. v.*

[or, by 7 & 8 Vict. c. 29, s. 1, p. 172, "on any public road, highway or path, or the sides thereof, or at the openings, outlets or gates from any such land into any such public road, highway or path"],

^{9 Geo. 4, c. 69.}

^{night to be imprisoned three months and to fine sureties for first offence.}

or shall by night *unlawfully enter* or be in any land, whether open or inclosed, with any gun, net, engine or other instrument, for the purpose of taking or destroying game,⁵—such offender shall, upon conviction thereof before two justices of the peace, be committed for the first offence to the common gaol or house of correction for any period not exceeding three calendar months, there to be kept to hard labour, and at the expiration of such period shall find sureties by recognizance,—or in Scotland by bond of caution,—himself in ten pounds, and two sureties in five pounds each, or one surety in ten pounds, for his not so offending again for the space of one year next following,—and in case of not finding such sureties, shall be further imprisoned and kept to hard labour for the space of six calendar months, unless such sureties are sooner found;

" And in case such person shall so offend a second ^{Second of}

Riley, 3 C. & K. 116), and a variance in the name of the close, or occupier, or parish, will be fatal (*R. v. Owen*, Mood. C. C. 118). There must be an intention to destroy game in the place mentioned in the charge, and the proceedings must allege that the defendants were on the land for the purpose of taking game by night in such land (*Fletcher v. Calthrop*, 14 L. J. (N. S.), M. C. 49; 11 J. P. 1; 1 New Sess. Cas. 529; *In re Fletcher*, 13 L. J. (N. S.) M. C. 16). See forms of statements of these offences, Nos. 59—61, *post*, pp. 179, 180. There must be a bodily entry on the close mentioned, a constructive entry not being sufficient in the case of a single offender; but where there are several offenders associated together for the common purpose of taking game on the land in question, all need not actually enter, to render them all liable to conviction, and an entry by one only will suffice. Aiders and abettors, counsellors or procurers, in these offences, would be punishable in like manner in England (11 & 12 Vict. c. 43, s. 5, *ante*, p. 151), but not in Ireland, as 14 & 15 Vict. c. 93, s. 22, thereon, does not apply to cases under the Game Acts (see s. 42). See the cases under s. 9, *post*, p. 174, which are applicable here.

⁵ See note ⁵, *ante*, p. 168.

9 Geo. 4, c.
69.

fence, six
months, and
double sure-
ties.

Sect. 1.

time, and shall be thereof convicted before two justices of the peace, he shall be committed to the common gaol or house of correction for any period not exceeding six calendar months, there to be kept to hard labour, and at the expiration of such period shall find sureties by recognizance, or bond as aforesaid, himself in twenty pounds, and two sureties in ten pounds each, or one surety in twenty pounds, for his not so offending again for the space of two years next following, and in case of not finding such sureties shall be further imprisoned and kept to hard labour for the space of one year, unless such sureties are sooner found;⁶

Third of-
fence, to be
liable to
transporta-
tion.

" And in case such person shall so offend a third time he shall be guilty of a misdemeanor, and being convicted thereof shall be liable, at the discretion of the court, to be transported beyond seas for seven years, or to be imprisoned and kept to hard labour in the common gaol or house of correction for any term not exceeding two years;⁷—and in Scotland, if any person shall so offend a first, second or third time, he shall be liable to be punished in like manner as is hereby provided in each case."⁸

Owners or
occupiers of
land, lords of
manors, or
their ser-
vants, may
apprehend
offenders.

Sect. 2.

Sect. 2 enacts,—“ That where any person shall be found upon any land committing any such offence as is hereinbefore mentioned, it shall be lawful for the owner or occupier of such land,—or for any person having a right or reputed right of free warren or free chase thereon,—or for the lord of the manor or reputed manor wherein such land may be

⁶ *Vide infra*, pp. 176—179, for the summary mode of procedure under this section, and the proof required of the previous conviction, and pp. 180, 181, the forms to be used.

⁷ See sect. 8, *post*, p. 179, as to the mode of proving the previous conviction. The punishment, instead of transportation for seven years, is, by 20 & 21 Vict. c. 3, s. 2, penal servitude for seven years, or not less than three years. See s. 4, *post*, p. 176, as to the time of prosecution for this offence.

⁸ Sections 10 and 11 contain provisions as to the jurisdiction of sheriffs in Scotland, the proving of convictions, &c. They are given at p. 179.

Scotch pro-
cedure.

situate,—and also for any gamekeeper or servant of ^{9 Geo. 4,}
any of the persons herein mentioned, or any person ^{c. 69.}
assisting such gamekeeper or servant,—to seize and ^{Sect. 2.}
apprehend such offender upon such land, or in case
of pursuit being made, in any other place to which
he may have escaped therefrom, and to deliver him
as soon as may be into the custody of a peace officer
in order to his being conveyed before two justices of
the peace;⁹

“And in case such offender shall assault or offer ^{Offenders}
any violence with any gun, crossbow, fire-arms, ^{assaulting or}
bludgeon, stick, club or any other offensive weapon ^{offering vio-}
whatsoever, towards any person hereby authorized ^{lence deemed}
to seize and apprehend him, he shall, whether it be ^{guilty of mis-}
his first, second, or any other offence, be guilty of a ^{demeanor,}
misdemeanor, and being convicted thereof shall be ^{and liable to}
liable, at the discretion of the court, to be transported ^{be transport-}
^{ed for seven}
^{years, or im-}
^{prisoned for}
^{two years.}

⁹ The gamekeeper or other person here authorized may, without a written authority so to do, apprehend poachers on the manor without giving notice of his purpose, as where the prisoners were running away and were armed with guns for the obvious purpose of taking game (*R. v. Payne*, 1 Moo. C. C. 378; *R. v. Taylor*, 7 C. & P. 266; *R. v. Price*, 7 C. & P. 178; *R. v. Davis*, Id. 785). But the power to apprehend is not in the owner of the game or hirer of the shootings, or the gamekeeper or servant of either (*R. v. Price*, 5 Cox's C. C. 277; 15 J. P. 149); and if, being apprehended, the offenders resist, they commit no offence under this section (*Reg. v. Wood*, 1 F. & F. 470). The arrest must be on the land or manor, or under 7 & 8 Vict. c. 29, p. 172, on the road, as the case may be, in which they are found in pursuit of game by night, or off the land if the pursuit after them commenced on it, and the gamekeeper, &c., cannot wait to take the offenders elsewhere (Woolrych, G. L. 185, and see the cases of *Rez v. Tomlinson*, 7 C. & P. 183; *R. v. Gainer*, 7 C. & P. 281; *Reg. v. Fielding and Corbett*, 7 C. & P. 178; 2 C. & K. 621; *Reg. v. Meadham and Haines*, 2 C. & K. 683; *Re Price*, 7 C. & P. 178; Roscoe's Ev. in Cr. Cas. 5th ed., p. 529). The game in their possession recently killed may be demanded and seized (1 & 2 Will. 4, c. 32, s. 36, *ante*, p. 105); and in Scotland whether recently killed or not (2 & 3 Will. 4, c. 68, s. 5, Chap. XVIII.). If they cannot be legally arrested under this power, a constable may probably detain them and seize the game under the Poaching Prevention Act, Chap. XVI.

<sup>9 Geo. 4,
c. 69.</sup>

beyond seas for seven years, or to be imprisoned and kept to hard labour in the common gaol or house of correction for any term not exceeding two years;¹⁰—and in Scotland, whenever any person shall so offend, he shall be liable to be punished in like manner.”¹¹

<sup>7 & 8 Vict.
c. 29.</sup>

<sup>Recital of 9
Geo. 4, c. 69,
ss. 1, 2.</sup>

By 7 & 8 Vict. c. 29, s. 1, after reciting the ss. 1, 2 of 9 Geo. 4, c. 69, *supra*; that “the provisions of the said act have of late years been evaded and defeated by the destruction, by armed persons at night, of game or rabbits, not upon open or inclosed lands, as described in the said act, but upon public roads and highways, and other roads and paths leading through such lands, and also at the gates, outlets, and openings between such lands and roads, highways and paths, so that not only has the destruction of game or rabbits not been prevented, but the risk of murder and other grievous offences

¹⁰ Where there is no intention on the part of the keepers to arrest the offender at the time when an attack is made upon them, it is not an assault within this section (*Reg. v. Dodridge*, 8 Cox's Crim. Cas. 334; and see *Reg. v. Garnham, post*, note¹², p. 174). As to what is an “offensive weapon,” see the cases under s. 9, p. 175. When the keeper is lawfully engaged in apprehending a poacher, and he meets with violence, he may himself use violence, and if he be killed it is murder. So it is as to all the poachers, if a gang join together, and death ensues. Unless some token of dissatisfaction is shown by some of them, the whole company are guilty of murder, and so are all those who do not manifest their dissent (*R. v. Ball*, 1 Mood. C. C. 333; *R. v. Warner*, Id. 380; *R. v. Edmead and others*, 3 C. & P. 390; *Woolrych*, G. L. pp. 187, 188; Roscoe's Ev. in Cr. Cas. 5th ed., pp. 732—734; Archbold's Cr. Pl. by Welsby, 15th ed., p. 554). See 24 & 25 Vict. c. 100, s. 14, as to feloniously shooting or attempting to shoot at persons with intent to murder; s. 18, or the like or wounding with intent to maim, do grievous bodily harm, prevent lawful apprehension or detainer; s. 20, or inflicting bodily injury, with or without a weapon; and s. 21, attempting to choke or render another insensible with intent to commit any indictable offence (the latter sect. is amended by the addition of whipping, by 26 & 27 Vict. c. 44). See note⁷, p. 170, for the present punishment, &c. for the offence in the text.

¹¹ See note⁹, *supra*.

contemplated by the said act has been increased, ^{7 & 8 Vict. c. 29.} and great danger and alarm occasioned to persons using such roads, highways and paths;" and that "it is expedient that the remedies provided by the said act against such offences as hereinbefore mentioned, should be extended and applied to the like offences committed upon such roads, highways and paths," enacts,—

"That from and after the passing of this act [4th July, 1844], all the pains, punishments and forfeitures imposed by the said act upon persons by night unlawfully taking or destroying any game or rabbits in any land, open or inclosed, as therein set forth, shall be applicable to and imposed upon *any person by night unlawfully taking or destroying any game or rabbits on any public road, highway or path, or the sides thereof, or at the openings, outlets, or gates from any such land into any such public road, highway or path,* in the like manner as upon any such lands open or inclosed ;¹²

"And it shall be lawful for the owner or occupier of any land adjoining either side of that part of such road, highway or path where the offender shall be, and the gamekeeper or servant of such owner or occupier, and any person assisting such gamekeeper or servant, and for all the persons authorized by the said act to apprehend any offender against the provisions thereof, to seize and apprehend any person offending against the said act or this act ;—and the said act, and all the powers, provisions, authorities

Punishments
and for-
feitures im-
posed by the
9 Geo. 4, c.
69, on per-
sons by night
destroying
game or
rabbits in
any open or
inclosed land,
to apply to
persons by
night de-
stroying
game or rab-
bits on any
public road,
&c.

Power to ap-
prehend
offenders.

Powers of 9
Geo. 4, c. 69,
to apply.

¹² This enactment is confined to the actual *taking or destroying* game or rabbits, and does not make it an offence to be upon the highway "*for the purpose of* taking or destroying game" as in 9 Geo. 4, c. 69, s. 1, p. 169. Before this enactment of 7 & 8 Vict. c. 29, it was found that poachers pursued their vocation by placing nets on gates and outlets of fields leading into highways, and then, by means of dogs, driving game into these nets, without themselves entering on the land. *Reg. v. Pratt, ante*, p. 100, decides that a trespass may be committed on a road in the day-time. The powers of the Poaching Prevention Act (Chap. XVI.), may be exercised by a constable by night as well as by day on highways.

7 & 8 Vict.
c. 29.

and jurisdiction therein or thereby contained or given, shall be as applicable for carrying this act into execution as if the same had been herein specially set forth.”

Persons to
the number
of three,
being armed,
entering any
land for the
purpose of
taking or
destroying
game, &c.,
guilty of a
misde-
meanor.
Sect. 9.

9 Geo. 4, c. 69, sect. 9 enacts,—“That if any persons, to the number of three or more together, shall by night unlawfully enter or be in any land, whether open or inclosed, for the purpose of taking or destroying game or rabbits, any of such persons being armed with any gun, crossbow, fire-arms, bludgeon or any other offensive weapon, each and every of such persons shall be guilty of a misdemeanor,”¹³—and being convicted thereof before the

¹³ Neither this or the previous sections are applicable to tame game, and therefore this section would not apply to an entry on land to take tame pheasants, under the control or care of a hen (which are not game, but subjects of larceny), or to an assault arising out of such entry (*Reg. v. Garnham*, 8 Cox's Crim. Cas. 451; 2 F. & F. 347). The offenders under this section are also offenders under the first section, and may be apprehended under the authority of s. 2, p. 170 (*R. v. Ball*, 1 Mood. C. C. 330); and, indeed, the 14 & 15 Vict. c. 19, s. 11, which gives any person the right to apprehend persons committing indictable offences in the night, applies to persons night poaching, although the night is defined to begin and end at different times in the 9 Geo. 4, c. 69, and 14 & 15 Vict. c. 19 (*Reg. v. Sanderson*, 1 F. & F. 598, per *Willes*, J.). *Vide* cases in the notes ⁴, ⁵, to s. 1, p. 168. The 7 & 8 Vict. c. 29, *supra*, as to being on public roads by night is not applicable to this offence; but, possibly where the soil of the road belongs to the owner of the adjoining land, any act of the offender showing his purpose to be within this section (9th), would be held to be an entry on the land, as it was held to be under similar circumstances in a case of trespass in pursuit of game (*Reg. v. Pratt*, *ante*, p. 100). The intent or purpose for which the defendants were on the land (or it seems, *supra*, on a road also in certain cases) is proved by circumstances from which a jury may infer it, as that the land was a preserve for game, or that the defendants discharged guns there, or that they actually took game or rabbits. All who are at the place, each acting his part, with the common intent of taking game on the land, are equally guilty, though some of them only are bodily on the land. If, therefore, some (though less than three) enter the land described (whether it be open land, or consist of one or more closes

What an en-
tering on
land.

justices of gaol delivery, or of the court of great ⁹ Geo. 4, sessions of the county or place in which the offence ^{c. 69.} shall be committed, shall be liable, at the discretion ^{Sect. 9.} of the court, to be transported beyond seas for any term not exceeding fourteen years nor less than seven years,¹⁴ or to be imprisoned and kept to hard labour for any term not exceeding three years; and

or inclosures) armed, and others be watching on the outside of the land to give an alarm if necessary, they may equally be convicted with those who actually enter the land, on a charge against them all for having entered the land armed (*R. v. Passey*, 7 C. & P. 282; *R. v. Lockett*, Id. 300; *R. v. Andrews*, 2 M. & Rob. 37; *Reg. v. Whittaker*, 17 L. J. (N. S.) M. C. 127; 1 Den. C. C. R. 310; 2 C. & K. 636; *R. v. Scotton*, 5 Q. B. 493; *Reg. v. Uezzell*, 20 L. J. (N. S.) M. C. 192; *S. C. R. v. Eaton and others*, 2 Den. C. C. 274; *Reg. v. Goodfellow*, 1 Den. C. C. 81; 1 Car. & K. 724). But not so, if some of them being on the land in question, another is poaching independently of them on adjoining land (*R. v. Nickless*, 8 C. & P. 757; *R. v. Dowsell*, 6 C. & P. 398; Arch. Cr. Pl. by Welsby, 15th ed., 800; and see Roscoe's Ev. in Cr. Cas. 5th ed., 526, 527). As to the term "offensive ^{What is an} weapon" under this section, a stick (which is mentioned in "offensive ^{weapon.}" section 2, *ante*, p. 171), is not such a weapon, unless the jury find that the defendant took it with him for the purpose of offence (*R. v. Palmer*, 1 Moo. & Rob. 70; *R. v. Johnson*, Russ. & Ry. 492; *R. v. Fry*, 2 M. & R. 42). Large stones are offensive weapons, if the jury find that they are calculated to inflict injury and were brought out and used for that purpose (*R. v. Grice*, 7 Car. & P. 803). If one of the party be armed, with (and not without) the knowledge of the rest, it will support an allegation that they were all armed (*R. v. Smith*, Russ. & Ry. 368; *Reg. v. Goodfellow*, 1 Den. C. C. 81; 1 Car. & K. 724; *R. v. Southern*, Russ. & Ry. 444); and it is sufficient if the jury are satisfied that they were armed on the land, although not at the time they were discovered (*R. v. Nash*, Russ. & Ry. 386). The prosecution need not prove that no permission was given by the landlord or tenant, so as to show the prisoners were there "unlawfully" (*Reg. v. Wood*, 1 Dears. & Bell, C. C. 1; 25 L. J. (N. S.) M. C. 96; Roscoe's Ev. in Cr. Cas. 5th ed., 527, 528).

¹⁴ The punishment is now, instead of transportation by 20 & 21 Vict. c. 3, s. 2, penal servitude for not exceeding fourteen nor less than three years. See s. 4, p. 176, for the time of prosecution.

9 Geo. 4,
c. 69.

Persons
using fire-
arms by
night.

Killing hares
by night.

Limitation of
time for com-
mencing
proceedings.

Sect. 4.

in Scotland any persons so offending shall be liable to be punished in like manner.”¹⁵

By the 11 & 12 Vict. c. 29, s. 5, as to England, and 11 & 12 Vict. c. 30, s. 4, as to Scotland, *no* person is to “use any fire-arms or gun of any description, *by night*, for the purpose of killing any game or hares,” but in Ireland a like prohibition is not applicable to qualified persons (27 Geo. 3, c. 35, s. 4).

The killing of hares or conies in *warrens or breeding grounds* by night, is punishable under 24 & 25 Vict. c. 96, s. 17, *post*, Chap. XV.

The following sections of the 9 Geo. 4, c. 69, have reference to the procedure for the offences previously described :—

Sect. 4 enacts,—“That the prosecution for every offence punishable upon summary conviction by virtue of this act shall be commenced within six calendar months after the commission of the offence :—and the prosecution for every offence punishable upon indictment, or otherwise than upon summary conviction, by virtue of this act, shall be commenced within twelve calendar months after the commission of such offence.”—[The case of *R. v. Austen*, 1 C. & K. 621, held that the commitment of the accused, and *Reg. v. Brooks*, 1 Den. C. C. 217; 2 Cox’s C. C. 436, decided that the laying of the information or apprehending the accused, in each case being within the twelve months, was a commencement of the proceedings; but *Pollock*, C. B., held, in a recent case, that the issue of a warrant of apprehension is not such commencement (*Reg. v. Hull*, 2 F. & F. 16). In summary proceedings in England and Ireland, the preferring of the information in time is the commencement of the prosecution in general sufficient to warrant a conviction at any time afterwards (Oke’s “Synopsis,” 8th ed. p. 98), and in Scotland with the presentation of a petition for a warrant to apprehend (Paterson, 97). The 11 & 12 Vict. c. 42, relates to the mode of taking examinations, bailing accused &c., in indictable offences in England (Id. p. 681—759); but in Ireland the 14 & 15 Vict. c. 93, ss. 11, 14, 19, thereon are not applicable, as sect. 42 says the act is not to extend to the Game Acts, excepting the forms. No costs of prosecution are allowed to the prosecutors on indictments under the Poaching Acts.]

¹⁵ See ss. 10, 11 hereon, p. 179.

Sect. 3 enacts,—“That where any person shall be charged on the oath of a credible witness, or in Scotland on the application of the procurator fiscal of court, before any justice of the peace, with any offence punishable upon summary conviction by virtue of this act, the justice may issue his warrant for apprehending such person, and bringing him before two justices of the peace, to be dealt with according to law.”—[The form of this warrant will, in England, be B. in 11 & 12 Vict. c. 43, and see s. 3, as to its execution, Oke's “Synopsis,” 8th ed. p. 114; as to Ireland, see 14 & 15 Vict. c. 93, s. 11, art. 3 and s. 42.]

Sect. 5 enacts,—“That the justices of the peace before whom any person shall be summarily convicted of any offence against this act may cause the conviction to be drawn up in the following form of words, or in any other form of words to the same effect, as the case may require; that is to say,

“Be it remembered, that on the — day of —, in the year of our Lord —, at —, in the county of —, [or riding, division, liberty, city, &c., as the case may be,] A. O. is convicted before us [naming the justices], two of his majesty's justices of the peace for the said county [or riding, &c.], for that he the said A. O. did [specify the offence, and the time and place when and where the same was committed, as the case may be, and on a second conviction state the first conviction]; and we the said justices adjudge the said A. O. for his said offence to be imprisoned in the —, and there kept to hard labour for the period of —, and at the expiration of such period to find sureties, by recognizance, or bond of caution in Scotland, himself in the sum of ten pounds, and two sureties in the sum of five pounds each, or one surety in the sum of ten pounds, conditioned that he the said A. O. shall not so offend again for space of one year next following; and we further adjudge the said A. O., in case he shall not find such sureties as aforesaid, to be further imprisoned and kept to hard labour for the space of six calendar months, unless such sureties shall be sooner found. Given under our hands, the day and year first above mentioned.”

[This is similar to the form I 3, in schedule to the English Act 11 & 12 Vict. c. 43, either of which may be used as the skeleton form. This only contains the adjudication for a first offence; for, on a second conviction, there should be an averment of the previous conviction, as shown in Oke's “Magisterial Formulist,” 3rd ed., pp. 155, 156.

9 Geo. 4,
c. 69.

Costs may be ordered to be paid by the defendants in these cases, and there may be an additional month's imprisonment imposed for them (11 & 12 Vict. c. 43, s. 24). The forms of statements of the offences are at pp. 180, 181. In Ireland, the decision is entered in an order book and no conviction is drawn up (14 & 15 Vict. c. 93, ss. 21, 42).]

**Appeal
against the
summary
conviction.
Sect. 6.**

Sect. 6 enacts,—“That any person who shall think himself aggrieved by any such summary conviction may appeal to the next court of general or quarter sessions which shall be holden, not less than twelve days after the day of such conviction, for the county, riding or division, wherein the cause of complaint shall have arisen;—provided that such person shall give to the complainant a notice in writing of such appeal, and of the cause and matter thereof, within three days after such conviction, and seven clear days at the least before such sessions, and shall also either remain in custody until the sessions, or within such three days enter into a recognizance, or bond of caution in Scotland, with a sufficient surety, before a justice of the peace, conditioned personally to appear at the said sessions, and to try such appeal, and to abide the judgment of the court thereupon, and to pay such costs as shall be awarded by the court;—and upon such notice being given, and such recognizance or bond being entered into, the justice before whom the same shall be entered into shall liberate such person if in custody;—and the court at such sessions shall bear and determine the matter of appeal, and shall make such order therein, with or without costs to either party, as to the court shall seem meet;—and in case of the dismissal of the appeal or the affirmance of the conviction, shall order and adjudge the offender to be dealt with and punished according to the conviction, and to pay such costs as shall be awarded, and shall, if necessary, issue process for enforcing such judgment.”—[In Ireland the supplemental provisions of 14 & 15 Vict. c. 90, s. 9, and 14 & 15 Vict. c. 93, s. 24, may be applied, notwithstanding the exception in s. 42 of the latter act (Levinge's G. L. 86—88). See the reference to 12 & 13 Vict. c. 45, and 20 & 21 Vict. c. 43, *ante*, p. 154, allowing an appeal to a Superior Court on questions of law, which latter act is equally applicable to summary convictions under 9 Geo. 4, c. 69, in England as well as Ireland.]

**No certiorari,
&c.
Sect. 7.**

Sect. 7 enacts,—“That no such conviction, or adjudication made on appeal therefrom, shall be quashed for want of form, or be removed by certiorari, or otherwise, into any of his majesty's superior courts of record, or in Scotland by advocation or suspension into any superior court;—and no

warrant of commitment shall be held void by reason of any defect therein, provided it be therein alleged that the party has been convicted, and there be a good and valid conviction to sustain the same."—[See note ¹⁵, *ante*, p. 158, applicable hereto.]

Sect. 8 enacts,—“That on every conviction under this act for a first or second offence the convicting justices shall return the same to the next quarter sessions for the county, riding, division, city or place, wherein such offence shall have been committed;—and the record of such conviction, or any copy thereof, shall be evidence in any prosecution to be instituted against the party thereby convicted for a second or third offence;—and the clerk of the peace shall immediately on such return make or cause to be made a memorandum of such conviction in a register to be kept by him of the names and places of abode of the persons so convicted, and shall state whether such conviction be the first or second conviction of the offending party,”—[11 & 12 Vict. c. 43, s. 14 (England), contains a similar requirement to the first clause of this section, (see note ⁶, *ante*, p. 158.) As to the sufficiency of an indictment of an allegation of the previous conviction, see *Cureton v. Reg.*, 30 L. J. (N. S.) M. C. 149; 8 Cox's C. C. 481; 4 Law T., N. S. 286; 25 J. P. 436. In addition to this proof there should be evidence identifying the offender as the person named in the previous conviction.”]

Sect 10 enacts,—“That in Scotland the sheriff of the county within which the offence shall have been committed shall have accumulative jurisdiction with the justices of the peace in regard to the same; and the conviction in Scotland may be proved in the same manner as a conviction in any other case according to the law of Scotland.”

Sect. 11 enacts,—“That in all cases in Scotland of a third offence, or in other cases in Scotland where a sentence of transportation may, by the provisions of this act, be pronounced, the offender shall be tried before the high court or circuit court of justiciary.”

Convictions
to be return-
ed to the
quarter
sessions and
registered,
and may be
given in
evidence.
Sect. 8.

Jurisdiction
of sheriff in
Scotland.
Proving of
conviction.
Sect. 10.

Third of-
fence, &c. to
be tried in
certain
courts.
Sect. 11.

FORMS.¹⁶

59. Taking or destroying game or rabbits by night. For that you or [or he the said A. B.] on the —— day of —— at the parish of —— in the said county, about the 1st or 2nd hour of —— in the night of the same day [or three hours after sunset, or before sunrise], by night unlawfully did take offence. [or destroy] certain game, to wit, two partridges, 69, s. 1). [or take, or destroy, one rabbit].*

* In a certain close of land in the occupation [or the property] of C. D. [or in certain open land in the occupation, or the property of C. D., or in a certain wood in the occupation, or the property of C. D.] there situate, contrary to the form of the statute in such case made and provided (the same being your or his [first] offence).

60. The like Proceed to the asterisk* in form No. 59, *supra*, and then: in [or on the side of] a certain public road [or public highway, or public path].

and 7 & 8 Vict. c. 29, s. 1). [or at a certain opening or outlet or gate, from a certain close in the occupation or the property of C. D., into a certain public road, or public highway, or public path],

there situate, leading from —— to —— [or called the —— lane], contrary, &c. [as in No. 59, *supra*.]

61. Entering by night on land with gun to take or destroy game (9 Geo. 4, c. 69, s. 1). For that you [or he the said A. B.] on &c., at &c., about the hour of —— in the night of the same day [or two hours after sunset, or before sunrise], by night unlawfully did enter and was in a certain close of land in the occupation [or the property] of C. D. [or wood in the occupation, or the property of C. D., or open land, the property of C. D.] there situate, with a certain gun [or net or engine, to wit, a snare,] for the purpose then and there by night as aforesaid of taking [or destroying] game [if known, say, to wit, partridges] there, contrary, &c. [as in form No. 59, *supra*.]

62. The like offences as

* The first three of these forms are for use in summary proceedings, and are to be inserted in the general forms applicable in 11 & 12 Vict. c. 48; the remaining three are for use in cases triable on indictment, and are intended for insertion in a warrant to apprehend, commitment for trial, &c. They are taken from Oke's "Magisterial Formulist," 3rd ed., pp. 155, 528, to which work reference should be made for other forms necessary.

*ments, adding.—“ he the said A. B. having before then above, after
been twice previously convicted of the like offence.”* two previous
(Indictable.)

For that he the said A. B. on &c., on &c., in the night time, to wit, about the hour of —, in the night of the said day [or two hours after sunset], at the parish of —, in the said [county] of —, was found by C. D. upon a certain close of land of [or in the occupation of] E. F. there situate, with a certain gun [or as the case may be], for the purpose then, and by night as aforesaid, unlawfully taking and destroying game, the said C. D. being the gamekeeper of the said E. F., and having then lawful authority to seize and apprehend the said A. B., and that he the said C. D., being then about to seize and apprehend him, he the said A. B. [with the gun aforesaid] unlawfully did then assault and beat and offer violence towards the said C. D., contrary, &c.

For that he the said A. B., [D. G. and G. H.,] on &c., at &c., together with divers other persons unknown, [to the number of three or more together,] about the hour of —, in the night of the same day [or two hours after sunset], being then respectively [or the said A. B. being then] armed with a gun [or offensive weapon, to wit, a bludgeon, or as the case may be] together unlawfully did enter a certain close of land, then in the occupation of one E. F. there situate, and were then by night as aforesaid, and armed as aforesaid, in the said land for the purpose therein of taking and destroying game [or rabbits] there, contrary, &c.

CHAPTER XIV.

HUNTING AND KILLING DEER, IN ENGLAND AND
IRELAND.

Excise li-
cence now
necessary to
kill deer.

AN excise licence to kill deer is, since the 23 & 24 Vict. c. 90, required to be taken out in like manner as for taking game, woodcocks, &c., except in the cases of an owner or occupier of inclosed lands killing deer thereon, and deer taken by hunting with hounds. See ss. 2, 5, *ante*, pp. 60, 64. In Ireland there is a close season for deer, which there falls under the term "game" (10 Will. 3, c. 8, ss. 6, 13, Chap. XIX.).

Enactments
protecting
deer and
keepers, &c.

24 & 25 Vict.
c. 96.

Stealing deer
in an unin-
closed part of
a forest.

Sect. 12.

The following enactments in the Larceny Consolidation Act of 1861, relate to the protection of deer in forests and chases, and the deerkeepers, &c. The 24 & 25 Vict. c. 96, s. 12, enacts,—“Whoever shall unlawfully and wilfully course, hunt, snare, or carry away,—or kill or wound,—or attempt to kill or wound,—any deer kept or being in the *uninclosed* part of any forest, chase, or purlieu, shall for every such offence, on conviction thereof before a justice of the peace, forfeit and pay such sum, not exceeding fifty pounds, as to the justice shall seem meet;¹

“And whosoever having been previously convicted of any offence relating to deer, for which a pecuniary penalty shall have been imposed by this or by any former act of parliament,² shall afterwards

¹ See *post*, pp. 185—187, for the mode of procedure for the recovery of penalties under the act, in England and Ireland, and p. 188, description of offences and other forms.

² 7 & 8 Geo. 4, c. 29, s. 26, in force in England up to the 31st October, 1861, from which day it was repealed by 24 & 25 Vict. c. 95.

commit any of the offences hereinbefore enumerated, ^{24 & 25 Vict.}
^{c. 96.} whether such second offence be of the same description as the first or not, shall be guilty of felony,—and being convicted thereof shall be liable, at the discretion of the court, to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement, and, if a male under the age of sixteen years, with or without whipping.”³

Sect. 13 enacts,—“ Whosoever shall unlawfully Stealing deer
 and wilfully course, hunt, snare, or carry away, — in any in-
 or kill or wound,—or attempt to kill or wound,— closed ground.
 any deer kept or being in the *inclosed* part of any forest, chase, or purlieu,—or in any inclosed land where deer shall be usually kept,⁴—shall be guilty ^{Sect. 13.} of felony,—and being convicted thereof shall be liable, at the discretion of the court, to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement, and, if a male under the age of sixteen years, with or without whipping.”³

Sect. 14 enacts,—“ if any deer, or the head, skin, Suspected persons
 or other part thereof, or any snare or engine for the found in pos-
 taking of deer, shall be found⁵ in the possession of session of
 any person or on the premises of any person with venison, &c., his knowledge, and such person, being taken, or and not satis- summoned before a justice of the peace, shall not it. factorily ac-
 counting for satisfy the justice that he came lawfully by such Sect. 14.
 deer, or the head, skin, or other part thereof, or had a lawful occasion for such snare or engine, and did

³ *Vide* the procedure in these indictable offences, pp. 187, 188 ; forms, Nos. 66, 67, p. 188, which are triable either at quarter sessions or assizes.

⁴ Stealing deer in a park, being then considered tame, is the subject of larceny at common law, and indictable as simple larceny (*see ante*, p. 39).

⁵ A search warrant may be granted for deer (but not the engines, &c.), under s. 103, *post*, p. 186. See forms of information for, and search warrant, Nos. 68, 69, *post*, p. 188, 189. The offender could be apprehended, under s. 103, without a warrant for the offence, if seen committing it (*see p. 186*).

24 & 25 Vict. c. 96. not keep the same for any unlawful purpose, he shall, on conviction by the justice, forfeit and pay any sum not exceeding twenty pounds;⁶

In case they cannot be convicted, how the justice may proceed.

Sect. 14.

“And if any such person shall not under the said provisions be liable to conviction, then, for the discovery of the party who actually killed or stole such deer, the justice, at his discretion, as the evidence given and the circumstances of the case shall require, may summon before him every person through whose hands such deer, or the head, skin, or other part thereof, shall appear to have passed;—and if the person from whom the same shall have been first received, or who shall have had possession thereof, shall not satisfy the justice that he came lawfully by the same, he shall, on conviction by the justice, be liable to the payment of such sum of money as is hereinbefore last mentioned.”⁶

Setting engines for taking deer or pulling down park fences.

Sect. 15.

Sect. 15 enacts,—“ Whosoever shall unlawfully and wilfully set or use any snare or engine whatsoever, for the purpose of taking or killing deer, in any part of any forest, chase, or purlieu, whether such part be inclosed or not,—or in any fence or bank dividing the same from any land adjoining,—or in any inclosed land where deer shall be usually kept,—or shall unlawfully and wilfully destroy any part of the fence of any land where any deer shall be then kept,—shall, on conviction thereof before a justice of the peace, forfeit and pay such sum of money, not exceeding twenty pounds, as to the justice shall seem meet.”⁶

Deerkeepers, &c. may seize the guns, &c. of offenders who, on demand, do not deliver up the same.

Sect. 16.

Sect. 16 enacts,—“ If any person shall enter into any forest, chase, or purlieu, whether inclosed or not,—or into any inclosed land where deer shall be usually kept,—with intent unlawfully to hunt, course, wound, kill, snare, or carry away any deer, every person intrusted with the care of such deer, and any of his assistants, whether in his presence

⁶ See note ¹, p. 182.

Vide forms of complaint, summons, &c., Nos. 71—73, post, pp. 189, 190.

or not,⁸ may demand from every such offender any ^{24 & 25 Vict.} c. 96. gun, fire-arms, snare, or engine in his possession, and any dog there brought for hunting, coursing or killing deer,—and in case such offender shall not immediately deliver up the same, may seize and take the same from him in any of those respective places, or, upon pursuit made, in any other place to which he may have escaped therefrom, for the use of the owner of the deer;

“And if any such offender shall unlawfully beat Resistance to
or wound any person intrusted with the care of the keepers, &c.
deer, or any of his assistants, in the execution of any in the execu-
of the powers given by this act,⁹ every such offender tion of their
shall be guilty of felony, and being convicted thereof duty.
shall be liable, at the discretion of the court, to be Felony.
imprisoned for any term not exceeding two years,
with or without hard labour, and with or without
solitary confinement, and, if a male under the age
of sixteen years, with or without whipping.¹⁰ Sect. 16.

The procedure in summary convictions for the ^{Summary} ^{procedure.} offences before described under the 24 & 25 Vict. c. 96, is by s. 120 to be in England in the manner directed by the 11 & 12 Vict. c. 43 (so far as no provision is thereby made for any matter), and in Ireland before “two or more justices,” or one metropolitan or stipendiary magistrate in manner directed by 14 & 15 Vict. c. 93; but by 25 & 26 Vict. c. 50, s. 1, as to Ireland, offences there may be prosecuted before *one* justice in petty sessions, or two justices out of petty sessions.¹¹ The procedure may be shortly stated :—

⁸ The owner of the deer is not authorized to demand or seize the gun, &c., of the poacher; but he might arrest him without warrant under the powers of s. 103, *post*, p. 186, 187.

⁹ See *Reg. v. Doddridge*, in note ¹⁰, *ante*, p. 172, applicable to this offence also.

¹⁰ *Vide* the procedure in these indictable offences, pp. 187, 188, and the form, No. 76, p. 191, which are triable either at the quarter sessions or assizes.

¹¹ The enactments of the 11 & 12 Vict. c. 43, as well as the practice generally in England, will be found in Oke’s Magisterial “*Synopsis*,” 8th ed., pp. 91—190. In Ireland, see Levinge’s *Justices’ Manual*.

24 & 25 Vict. c. 96. The information, which may be preferred by any person, must be laid within six calendar months after the commission of the offence (11 & 12 Vict. c. 43, s. 11; 14 & 15 Vict. c. 93, s. 10), and on oath in England (24 & 25 Vict. c. 96, s. 105; 25 & 26 Vict. c. 50, s. 2). Abettors and accessories in offences are punishable as principals (*Id.* s. 99) as well as receivers of property taken (*Id.* s. 97).

Process against offenders ; Apprehension, and search warrant. (*Sect. 103.*) A summons may be issued to the offender, and a warrant to apprehend him on its disobedience, or such warrant in the first instance (*Id.* s. 105, which section does not apply to Ireland, 25 & 26 Vict. c. 50, s. 2);—or he may be apprehended, if “*found committing the offence*,” by any person without a warrant, and forthwith taken with the property before a neighbouring justice (*Id.* s. 103).¹² A search warrant may be granted by a justice (where the property taken is suspected to be) upon an information on oath (*Id.*),—but this will not include guns, nets, &c., used in the stealing or taking of the property.

Bailing and hearing cases. For an analysis of the provisions of the 11 & 12 Vict. c. 43 (England), and of the 14 & 15 Vict. c. 93 (Ireland), as to bailing offenders, adjourning and hearing charges, dismissing informations, ordering costs, and summoning witnesses, see Chap. IX., *ante*, pp. 127, 128.

Convictions. The forms of conviction to be used in England will be those in the schedule to 11 & 12 Vict. c. 43 (*Id.* s. 120), viz., I 3, where imprisonment only adjudged, and I 2, where a penalty imposed, which are to be returned to the quarter sessions, of which a certified copy is to be evidence (s. 112), and are a bar to other proceedings for the same cause (s. 109). In Ireland, where no formal conviction is drawn up, see 14 & 15 Vict. c. 93, s. 21.

Pardon of offender. Justices may discharge the offender on a first conviction on his compensating the party aggrieved for damages and costs (s. 108), and the crown may pardon for any offence (s. 109).

Scale of imprisonment in default of paying sums ordered. Sect. 107 provides a scale of imprisonment to which defendants may be committed on nonpayment of penalties, &c., i. e., where the sums adjudged with costs do not exceed 5*l.*, for not exceeding two calendar months ; where

¹² The party must be taken in the fact or else in quick pursuit (*R. v. Curran*, 3 C. & P. 397; *Hanway v. Boultbee*, 4 C. & P. 350; *Horley v. Rogers*, 29 L. J. (N. S.) M. C. 140; 2 Law T., N. S. 171; 24 J. P. 582). Of course this section does not affect the common law power to give or take into custody without warrant any person who has committed a *felony*.

they do not exceed 10*l.*, for not exceeding four calendar months; and in any other case for not exceeding six calendar months,—in every case determinable at any time on payment.

The penalties when received are payable to the treasurer of the county, &c., in which the offences are committed; the damage or value of the property injured or stolen going to the party aggrieved, except where each of several joint offenders pays the full amount, when the amount of actual damage only is receivable by him (*Id.* s. 106). The justice's clerk must apply the penalties properly, both in England (11 & 12 Vict. c. 43, s. 31) and in Ireland (14 & 15 Vict. c. 93, s. 22, art. 8, and 14 & 15 Vict. c. 90, s. 15).

A appeal is allowed to the defendant to the next court of general or quarter sessions, where the sum adjudged exceeds 5*l.*, or the imprisonment exceeds one calendar month, or the conviction takes place before one justice only on his entering into certain recognizances and making a deposit in lieu of sureties, and giving notice of appeal within three days after conviction (*Id.* s. 110). Convictions are not to be quashed for want of form, and no certiorari is allowed (*Id.* s. 111). As to Ireland, see 14 & 15 Vict. c. 93, s. 24. See also a reference to 12 & 13 Vict. c. 45, and 20 & 21 Vict. c. 43, as to appeals, *ante*, p. 154, the latter act applying to Ireland as well as to England.

The procedure for the indictable offences (felonies) in sections 12, 13, 16, pp. 182, 183, 184, will, in England, be under the 11 & 12 Vict. c. 42,¹³ and in Ireland under 14 & 15 Vict. c. 93, ss. 11, 14—19; but there are a few enactments in the 24 & 25 Vict. c. 96, which should here be referred to, viz.:

By s. 103 (p. 186 and note¹²) offenders may be apprehended by any person in the commission of the offence, and a justice on information on oath may grant a search warrant; by s. 104, persons loitering in the night (which is deemed by s. 1 to "commence at nine of the clock in the evening of each day, and to conclude at six of the clock on the morning of the next succeeding day"), and suspected of having committed or being about to commit any felony against the act, may be apprehended without warrant by a constable. Receivers of property stolen or taken (ss. 91, 93, 94), and accessories,

¹³ *Vide* Oke's "Synopsis," 8th ed., pp. 681—759.

24 & 25 Vict. aiders and abettors in the offences (s. 98), are punishable. c. 96. [The accused is *not* entitled to be bailed till the trial (11 & 12 Vict. c. 42, s. 23).] Sect. 116 provides the mode of proving a former conviction upon an indictment; in addition to which there should be evidence of the offender's identity. Restitution of "property" stolen, taken or received, may be made by the court (s. 100), but the definition of "property" in sect. 1 does not apparently include deer, &c., mentioned in the enactments in this Chapter. The court may require an offender to find surety for the peace (s. 117); and the costs of prosecutions are reimbursed to the prosecutor in cases of indictable misdemeanor as well as felonies (s. 121).

◆◆◆

FORMS.¹⁴

65. Coursing, For that you [*or he* the said A. E.] on &c., at &c., un-uninclosed deer in lawfully and wilfully did course [*or hunt, or snare, or carry places, first away,—or kill, or wound,—or attempt to kill or wound*] offence (s. 12). one fallow deer, the property of C. D., then kept and being* in the uninclosed part of a certain forest [*or chase or purlieu*], there called —, contrary, &c.

66. The like, *Describe as in the last form, merely adding the word "feloniously" before "unlawfully," and then:* he the said A. B. having been previously convicted of having coursed, killed and carried away [*or wounded*] a certain other deer kept in the uninclosed part of the same [*or a certain forest, or chase, or purlieu*].

67. Coursing, *Proceed to the asterisk * in form No. 65, adding the word "feloniously" before "unlawfully," and then:* in the &c. deer in inclosed places (s. 13, indictable). in the inclosed part of a certain forest [*or chase, or purlieu, or in certain inclosed land there situate, belonging to, or in the occupation of, the said C. D., wherein deer had been and then were usually kept*], contrary, &c.

68. Complaint for search warrant for venison or engine, &c. (*Id. ss. 14, 103.*) *Proceed in the usual form of complaint, Oke's "Formulist," 3rd ed., pp. 23, 24, and then:*—That he the said C. D. hath reasonable cause to suspect, and doth suspect and

¹⁴ These statements of offences are for use in filling up the general forms of justices' proceedings,—informations, summonses, commitments, &c., in 11 & 12 Vict. cc. 42, 43.

verily believes that A. B., of &c., hath in his possession 24 & 25 Vict. c. 96. there [or on his premises situate at —— in the said county, and with his knowledge], a deer, or some part thereof, then lately before unlawfully and wilfully carried away from [the uninclosed part of a certain forest, or chase, or purlieu, there called ——, in which it was kept, or as the case may be], [or if a snare, a snare or engine for the taking of deer unlawfully]; and that the grounds of such suspicions of the said C. D. are as follow, namely [stating the reasons].

Proceed in the usual form of warrant B, in 11 & 12 Vict. 69. Search c. 43, reciting the last complaint, and then:—These are, warrant therefore, to command you, in her majesty's name, forthwith with proper assistance to enter the said premises of the said A. B. in the daytime, and there make diligent search for the said deer [or snare, or engine], and if the same, or any part thereof, shall, upon such search, be found therein or in the possession of the said A. B., that you bring the same, and also the body of the said A. B. before me, or some other of her majesty's justices of the peace in and for the said county of ——, to answer to the said complaint and to satisfy the said justice that he came lawfully by the deer so found [or if a snare suspected, that he hath a lawful occasion for the said snare so found, and that he did not keep the same for any unlawful purpose], and to be further dealt with according to law. Given under my hand and seal, &c.

For that he the said A. B., on &c., at &c., unlawfully had in his possession [or had on his premises there situate and with his knowledge] a certain part of a deer, to wit, [the hind quarters of a deer] then lately before unlawfully and wilfully carried away from [*&c., describing the place as in the previous forms*] [or a snare or engine for the taking of deer; and that upon the said A. B. being taken [or summoned] before me the said justice now here, the said A. B. doth not satisfy me the said justice that he came lawfully by the said deer [or head, or skin],

[*or where a snare has been found, that he hath or then had a lawful occasion for the said snare or engine, and that he did not keep the same for any unlawful purpose,*]
but hath altogether failed in doing so, contrary, &c.

Proceed in the usual form, stating the matter to be,—That 71. Complaint lately upon part of a deer, to wit, the hind quarter thereof, for a sum being duly found in the possession [or on the premises] of mons against person

24 & 25 Vict. one A. B., of &c., at —, and the said A. B. being thereto upon, to wit, on the — day of — instant, taken [or summoned] before me the said justice [or J. P., Esquire, one of her majesty's justices of the peace in and for the said [county] of —], the said justice was informed and given to understand that one E. F., of &c., had had possession thereof on the — day of —.

72. Summons thereon to E. F. (Id.) *In the usual form Schedule A to 11 & 12 Vict. c. 43, but instead of "to answer, &c., say, " to satisfy me the said justice that you have come lawfully by the said part of the said deer, and to be further dealt with according to law."*

73. Statement of offence for conviction. (Id.) For that he the said E. F., on &c., had in his possession a certain part of a deer, to wit, the hind quarters, then lately before unlawfully and wilfully carried away from [&c., describing the place]; and that the said E. F., although duly summoned by me as such justice as aforesaid, did not appear here on this day before me, or satisfied me,

[or from the last asterisk*, having appeared here on this day before me the said justice in pursuance of the summons in that behalf, did not show unto or satisfy me]

that he came lawfully by the said hind quarter of the said deer, contrary, &c.

74. Setting engines, &c. for deer (Id. s. 15). For that you [or he the said A. B.] on &c., at &c., unlawfully and wilfully did set [or use] a certain engine [or snare] called —, for the purpose of then taking [or killing] deer in a certain part of a certain forest [or chase, or purlieu] there situate, called —,

[or in a certain fence, or bank, dividing a certain forest, called —, from certain land called —, adjoining thereto],

[or in certain inclosed land there situate in the occupation of one E. F., and in which inclosed land deer were then and usually kept], contrary, &c.

75. Destroying fence of land where deer kept (Id.) For that you [or he the said A. B.] on &c., at &c., unlawfully and wilfully did destroy a certain part, to wit, [twenty feet] of the fence of certain land there called —, [or in the occupation of E. F.] where deer were then and usually kept, contrary, &c.

[For forms of conviction, &c., for the offences described 24 & 25 Vict.
in forms Nos. 65, 70, 73, 74, 75, see Oke's "For-^{c. 96.}
mulist," 3rd ed., pp. 204, 205.]

For that he the said A. B., on &c., at &c., unlawfully 76. Trespass-
and feloniously did assault and beat [*or wound*] the said ^{sers assault-}ing deer-
C. D., the said C. D. being then a person intrusted with ^{keepers} (Id.
the care of the deer then usually kept and being in a cer-^{s. 16.}
tain forest [*or chase, or purlieu, or* in certain inclosed land (Indictable.)
wherein deer were then and usually kept] there situate,
and in the due execution of the powers given to him in
that behalf by the statute in that case made and provided,
contrary, &c.

CHAPTER XV.

KILLING HARES AND RABBITS, IN ENGLAND AND
IRELAND.

-
1. *As to Hares*, infra.
 2. *As to Rabbits*, p. 194.
-

1. AS TO HARES.

1. *As to hares.*
Hares included in term "game."

HARES are included in the definition of "game" in all the acts applicable throughout the United Kingdom (*ante*, p. 2), and all enactments as to game apply to them. There is no close time for them, the prohibited season for killing game applying only to certain birds (*ante*, p. 9); but until a recent act, 26 Vict. c. 19, which repeals 27 Geo. 3, c. 35, s. 4, in part, they could not be sold in Ireland between November and the July following.

Owner or occupier may kill hares without licence.

The owner or the occupier of land, having the right to the game thereon, may kill hares, or authorize another to do so, without taking out an excise licence to kill game; and so may persons in hunting and coursing with hounds. The privilege is given in England by the 11 & 12 Vict. c. 29, *ante*, pp. 88, 89, and in Scotland by 11 & 12 Vict. c. 30 (Chap. XVIII. Sect. 3), but cannot be exercised by night; and see 23 & 24 Vict. c. 90, s. 5, *ante*, pp. 64, 66). Ireland has no corresponding act.

24 & 25 Vict. c. 96. The taking of hares and rabbits in warrens or breeding-grounds, &c., is punishable under the Larceny Consolidation Act of 1861, 24 & 25 Vict.

c. 96, s. 17, which enacts,—“ Whosoever shall unlawfully and wilfully, between the expiration of the first hour after sunset and the beginning of the last hour before sunrise, take or kill any hare or rabbit in any warren or ground lawfully used for the breeding or keeping of hares or rabbits, whether the same be inclosed or not,¹ shall be guilty of a misdemeanor;”²

“ And whosoever shall unlawfully and wilfully, between the beginning of the last hour before sunrise and the expiration of the first hour after sunset, take or kill any hare or rabbit in any such warren or ground,¹—or shall at any time set or use therein

24 & 25 Vict.
c. 96.
Killing, &c.
hares or
rabbits in a
warren in the
night-time.

The like in
the day-time.
Sect. 17.

¹ See the observations in note ⁴, *ante*, p. 168, as to the supposed repeal of 9 Geo. 4, c. 69, s. 1, by this enactment. The warrens here alluded to are not free warrens (for which see *ante*, p. 41), but grounds set apart for the breeding of hares or conies, and though called warrens have no peculiar privileges, and may be made by any person on his own land, without any licence from the crown (*R. v. Lowther*, 2 Ld. Raym. 1409; 1 Stra. 637, *S. C.*), but the act does not apply to places where a few rabbits may be kept, as in a rick yard, except possibly the place has been kept exclusively for rabbits (*R. v. Garratt*, 6 C. & P. 369). The term “unlawfully” would extend to the case of a tenant of the lands killing or taking hares or rabbits, where they were reserved to the landlord or other person (see also note ⁶, *ante*, p. 168). If conies are out of a warren no person has any property in them, and a man may justify killing them if they eat up his corn; but no action lies against the owner of the warren (*Boulston’s case*, 5 Rep. 104). A person having a right of common may kill rabbits when out of the warren (Cro. Eliz. 548); but a mere right of common gives a man no power to kill the rabbits upon the common (*Hodesdon v. Gryssel*, Cro. Jac. 195; *Cooper v. Marshall*, 1 Burr. 259; *Hinsley v. Wilkinson*, Cro. Car. 388). A commoner may likewise maintain an action against the lord of a waste for surcharging the common with conies; but he cannot of his own accord fill up the burrows and remove the nuisance (*Cooper v. Marshall, supra*). The word “take” in this section means to catch as in a snare, and not the taking necessary to constitute larceny (*R. v. Glover*, R. & R. 269).

² For this indictable offence the punishment is, by the common law, fine, or imprisonment not exceeding two years, or both, at the quarter sessions or assizes. *Vide post*, p. 194, as to procedure.

24 & 25 Vict. c. 96. any snare or engine for the taking of hares or rabbits,—shall, on conviction thereof before a justice of the peace, forfeit and pay such sum of money, not exceeding five pounds, as to the justice shall seem meet;

Exception of sea-banks in Lincolnshire. “Provided that nothing in this section contained shall affect any person taking or killing in the daytime any rabbits on any sea-bank or river-bank in the county of Lincoln, so far as the tide shall extend, or within one furlong of such bank.”

Procedure: In indictable cases. The procedure for the indictable misdemeanor will be the same as pointed out under the last Chapter (XIV.), *ante*, p. 187, by the same enactments; but receivers of the hares and rabbits taken would be punishable under s. 95, the principal not being a felon.

In summary cases. In summary convictions the procedure will be precisely in the mode stated under Chap. XIV. *ante*, pp. 185—187.

2. AS TO RABBITS.

2. As to rabbits.

References to previously-stated law.

Rabbits, otherwise conies, are not included in the term “game” in any act except the Poaching Prevention Act, 25 & 26 Vict. c. 114, Chap. XVI.); but are the subject of special enactment in most instances, and are often omitted in the enactments as to game. For instance :

1. Conies are included in the excise licence to kill game, when killed by other persons than the proprietors of warrens, or the tenants of lands, and persons under their direction (*ante*, pp. 61, 64, 65):
2. Rabbits or conies are not included in a reservation of “game” in a lease by the landlord, and the tenant may consequently kill them and authorize others to do so (*ante*, p. 80, note, p. 84, note):
3. Conies are included in some of the enactments as to trespass (*ante*, pp. 98, 102, 104):

4. Rabbits are protected by the Night Poaching ^{24 & 25 Vict.}
Acts, 9 Geo. 4, c. 69, and 7 & 8 Vict. c. 29
ante, pp. 168, 172, 174):
5. Rabbits are also protected by day and night
when in warrens or breeding-grounds (*ante*,
p. 193):
6. Conies are not included in the enactments as
to the season of killing game (*ante*, p. 46):
7. Rabbits are included in the Poaching Pre-
vention Act, Chap. XVI., *post*, p. 199.

See note ¹, p. 193, as to the rights of persons
generally to kill conies in and out of a warren.



FORMS.

For that he the said A. B., on &c., at &c., at or about ^{77.} Taking or
the hour of ——, in the night of the same day [*or* three killing hares
hours before sunrise, *or as the case may be*], unlawfully and ^{or rabbits in}
wilfully did take [*or kill*] three hares [*or rabbits*] then in a ^{warrens by} night (*s. 17,*
certain warren and ground of one [*or the said*] C. D. there ^{indictable.}
situate, then lawfully used for the breeding and keeping of
hares [*or rabbits*], contrary, &c.

For that you [*or he* the said A. B.] on &c., at &c., un- ^{78.} The like,
lawfully and wilfully in the daytime of the same day, to wit, ^{in the day-}
about the hour of —— o'clock in the —— noon, did take ^{time (Id.)}
[*or kill*] certain hares [*or rabbits*], to wit, three hares [*or*
rabbits], then and there found in a certain warren [*or*
ground] of one E. F. there situate, * then lawfully used for
the breeding and keeping of hares [*or rabbits*], (*in the case*
of rabbits, adding, "not being any sea-bank or river-bank
in the county of Lincoln so far as the tide extended, or
within one furlong of such bank,") contrary, &c.

For that you [*or he* the said A. B.] on &c., at &c., un- ^{79.} Setting
lawfully and wilfully did set [*or use*] a certain snare [*or* snares for
engine], to wit, ——, for the purpose of then and there ^{taking hares,}
taking hares [*or rabbits*] in a certain warren [*or ground*] of renns (Id.)
one E. F. there situate [*&c.*, follow from the asterisk* in
the last form].

CHAPTER XVI.

THE POACHING PREVENTION ACT, 1862, 25 & 26
VICT. C. 114 (UNITED KINGDOM).

Preliminary observations. THIS act, intituled "*An Act for the Prevention of Poaching*," which received the royal assent on the 7th August, 1862, and is applicable to each part of the United Kingdom, recited that "it is expedient that the laws now in force for the better detection and prevention of poaching should be amended;" its main object being to remedy a serious and growing evil—the frequent breaches of the peace, and often murderous assaults, committed by poachers who go about in certain districts of the country in organized gangs to plunder game from land where they have no colour of right so to trespass, and to give to game somewhat the same protection of the laws which is given to other property.

The defect or anomaly was, so long ago as 1845-46, in the Report of the Committee on the Game Laws, pointed out, for they resolved in the 19th resolution (*ante*, p. 21), that it was their opinion "that the powers of constables should be better defined and enlarged in regard to the search and detention of persons found, under suspicious circumstances, with game in their possession." Also, in December, 1861, the evils resulting from that defect in the law were detailed in the following memorial addressed by the chief constables of twenty-eight

¹ Viz: Anglesey, Bedford, Bucks, Brecon, Cardigan, Carnarvon, Cheshire, Cornwall, Cumberland, Denbigh, Durham,

counties in England and Wales¹ to the Secretary of State for the Home Department:—

“SIR,

“We, the undersigned, chief constables of counties, although most anxious that the services of the constabulary should not in any way be directly or indirectly employed in the preservation of game, are, nevertheless, so deeply impressed with the very serious evils resulting from the present anomaly of the game laws, that we feel it imperative on us respectfully to submit to your serious consideration these evils, as briefly detailed below, with a view earnestly to pray for a remedy in such manner as may be thought advisable by her Majesty’s government.

Memorial
from chief
constables to
Home Secre-
tary.

“1. This is the only law of the land openly set at defiance by gangs of armed men at night, who by violence overpower all opposition, and so inflict a moral injury on the general supremacy of law and order.

“2. The murder or murderous attacks on the servants legally appointed to carry out these laws, is now of almost monthly occurrence.

“3. The desperate assaults committed on these servants thus appointed legally to prevent a misdemeanor, are, by their increasing frequency, becoming an example which is too often followed by violent assaults on the police when apprehending offenders at night for felonies, or when searching suspected parties.

“4. Poachers form a numerous class, who, by their training, local knowledge, and mode of life, when game fails, are habituated with comparative success to commit other offences, both against person and property.

“5. Poachers generally pass the days in idleness, drinking, and debauchery, with money freely to spend without work, and moreover are looked upon as village heroes for their nocturnal expeditions and assaults on keepers; which is an example of most attractive but demoralising tendency amongst the hard working and youthful population, more particularly when they observe that the constituted authorities can take no steps to prevent it.”

Flint, Gloucester, Hants, Kent, Lancashire, Leicester, Merioneth, Montgomery, Northumberland, Pembroke, Rutland, Salop, Stafford, Warwick, Wilts, Worcester, East Riding of York.

Scope of 25
& 26 Vict.
c. 114.

In endeavouring to attain the desired object—the “Prevention of Poaching,”—the statute 25 & 26 Vict. c. 114, does not alter or repeal any of the previous game laws, but provides a cumulative remedy² designed for the better discovery of offenders and preventing the sale of the ill-gotten property and the further use of the implements used in its capture, by giving to constables a permissive power, which previously none but the owners and occupiers of land and their gamekeepers possessed (and then only when the offenders were on the lands trespassed upon and had game in their possession, or by night on roads³), to search persons found in highways suspected of coming from land where they have been trespassing, and having game unlawfully obtained in their possession; and if game, guns, nets, &c. be found, to seize and detain the same, and to take proceedings against the parties before justices for the penalty thereby incurred.

In the notes to the principal enactment (sect. 2, p. 200) we embodied in the first edition of this act what we submitted was its proper legal construction, and that opinion, it is gratifying to observe, was confirmed in the first case under the act. It may be

² Erle, C. J., in the case of *Brown v. Turner, post*, p. 208, says, that the legislature intended by this act “to give larger powers” than under the old acts, and that “if it had been requisite to a conviction, that the party should have been seen upon the land, the former Game Act would have been sufficient.” In Scotland and Ireland there are, in the 18 Geo. 3, c. 54, s. 3, and 27 Geo. 3, c. 35, ss. 6, 9, enactments creating a similar offence—unlawful possession of game—to that in 25 & 26 Vict. c. 114, s. 2.

³ See 1 & 2 Will. 4, c. 32, s. 36, as to the day-time (*ante*, p. 105), and 9 Geo. 4, c. 69, s. 2 (*ante*, p. 170), as to the night-time; also 7 & 8 Vict. c. 29, s. 1 (*ante*, p. 173), as to apprehension on public roads by adjoining owners or occupiers, these two latter acts being applicable to the United Kingdom. As to Scotland, see 2 & 3 Will. 4, c. 68, s. 5, and 18 Geo. 3, c. 54, s. 3 (Chap. XVIII.). As to Ireland, see 10 Will. 3, c. 8, s. 15; 27 Geo. 3, c. 35, ss. 6, 9 (Chap. XIX.).

observed that the statute practically contains analogous and neither more nor less stringent provisions than before attached to the unlawful possession of marine stores, old metals, venison, deer, salmon, trees, fruits, dogs, wreck, and naval, ordnance and victualling stores, by several recent acts of parliament,—the person possessing any of these being required to satisfy a justice that he came lawfully by them; in other words, “the mere finding the articles under such circumstances is under this act presumptive evidence of guilt, unless the party suspected give a reasonable account how he came by them.”⁴

It will be convenient to divide this Chapter into these divisions:—

1. *The Act 25 & 26 Vict. c. 114, infra.*
2. *Decisions of the Superior Courts*, p. 207.
3. *Procedure for Penalties throughout the United Kingdom*, p. 211.
4. *Forms*, p. 215.

1. THE ACT 25 & 26 VICT. CAP. 114.

1. The act
25 & 26 Vict.
c. 114.

Sect. 1. “The word ‘game’ in this act shall for all the purposes of this act be deemed to include any one or more hares, pheasants, partridges, eggs of pheasants and partridges, woodcocks, snipes, rabbits, grouse, black or moor game, and eggs of grouse, black or moor game;⁵

Interpreta-
tion of terms:
“Game.”
Sect. 1.

“And the words ‘justice’ and ‘justices’ in this act shall, unless otherwise provided for, mean respectively a justice and justices of the peace respectively of or for the county, riding, division, liberty,

⁴ *Per Erle, C. J.*, in *Brown v. Turner*, p. 208.

⁵ This definition of “game,” as will be seen by reference to the Introduction, *ante*, p. 2, is much more extensive than has yet been given to it; the words here printed in italics being new. The Revenue Act, 23 & 24 Vict. c. 90 (*ante*, pp. 60, 61), has classed woodcocks, snipes and rabbits in the category with pheasants, &c. “Bustards” are omitted in the present act.

25 & 26 Vict. c. 114. city, borough, or place in which any game, gun, part of gun, net, snare, or engine after mentioned shall be found.”⁶

Power to constables to search persons without warrant, in certain cases, on roads;
Sect. 2.

Sect. 2. “It shall be lawful for any constable or peace officer in any county, borough, or place in Great Britain and Ireland, in any highway, street, or public place,⁷ to search any person whom he may have good cause to suspect of coming from any land where he shall have been unlawfully in search or pursuit of game,

or any person aiding or abetting such person;⁸

“And having in his possession any game unlawfully obtained, or any gun, part of gun, or nets or engines used for the killing or taking game;

Justices' jurisdiction.

⁶ Yet the game may have been taken in another jurisdiction than that where it was found on searching the offender, as, for instance, where the road is near the boundary line of two or more counties or a borough. *Vide note⁷, infra*, as to constable's authority.

District of constables' authority.

The authority of county police constables in England extends to liberties and franchises, and detached parts of other counties locally situated within their own county, and also to any adjoining county (2 & 3 Vict. c. 93, ss. 8, 27; 3 & 4 Vict. c. 88, s. 2; 21 & 22 Vict. c. 68, ss. 1, 2), as well as to any borough within their county (19 & 20 Vict. c. 69, s. 6). Borough constables have likewise authority in the county in which the borough is situated, in any county within seven miles of the borough, and in all liberties in such counties (5 & 6 Will. 4, c. 76, s. 76). Parish constables have the like authority as county constables, except in boroughs (5 & 6 Vict. c. 109, s. 15). As to the powers of the metropolitan police constables, see 2 & 3 Vict. c. 47, s. 5. Although the enactment is, in general terms, “any constable” in “any highway” may search, &c., it is doubtless intended that he shall execute the powers given him only in those places in which he can legally act under the provisions of the acts regulating his appointment and duties.

Aiders and abettors.

⁸ Independent of this enactment an aider and abettor would have been punishable in England under 11 & 12 Vict. c. 43, s. 5, and in Ireland under 14 & 15 Vict. c. 93, s. 22 (which is applied to this act by ss. 3, 4, p. 205), if he had game, &c., in his possession. By the general law all persons present at the commission of the misdemeanors under this act would and may be described as principals in the offences, and dealt with as such.

“And also to stop and search any cart or other <sup>25 & 26 Vict.
c. 114.</sup> conveyance in or upon which such constable or ^{Sect. 2.} peace officer shall have good cause to suspect that any such game or any such article or thing is being carried by any such person ;

“And should there be found any game or any such article or thing as aforesaid upon such person, <sup>If game, &c.
found, to obtain summons;</sup> cart or other conveyance, to seize and detain such game, article, or thing ;—and such constable or peace officer shall in such case apply to some justice of the peace for a summons⁹ citing such per-

⁹ By this enactment, a constable is authorized to do the following things :—

1. In any highway, street, or public place, to search any person whom he *suspects* both of coming *from* any land (whether he is seen or not there), where he has been *unlawfully* in search or pursuit of game, and of having possession of any game unlawfully obtained, or any guns, nets, &c., which have been or are usually used for killing or taking game :
2. In any highway, &c., to search any person whom he *suspects* of aiding and abetting some other person he *suspects* both of coming *from* any land, where such last-mentioned person has been *unlawfully* in search or pursuit of game, and (the aider) of having possession of any game unlawfully obtained, or any guns, nets, &c., which have been or are usually used for killing or taking game :
3. In any highway, &c., to stop and search any cart or conveyance, in which he *suspects* any game, or any guns, nets, &c., are being carried by the person he *suspects* of coming *from* any land, where he has been *unlawfully* in search or pursuit of game :
4. In any highway, &c., to stop and search any cart or conveyance in which he *suspects* any game, or any guns, nets, &c., are being carried by the person he *suspects* of aiding and abetting some other person he *suspects* of coming *from* land, where he has been *unlawfully* in search or pursuit of game :
5. To seize and detain the game, guns, nets, &c., which he may find upon the person he *suspects* of coming *from* the land, or upon the person aiding him, or in the cart in which it is carried by either of them, and apply [within three calendar months in England and Scotland, and six calendar months in Ireland] to a justice,

25 & 26 Vict. c. 114. Sect. 2. son to appear before two justices of the peace assembled in petty sessions, as provided in the

for the jurisdiction where he finds the game, &c., for a summons against the offender, to appear before two justices of the same jurisdiction [*Vide* forms of information, and summonses, Nos. 80, 83, *post*, pp. 215, 217].

It will, therefore, be seen that the principal reason for the constable searching a party or a conveyance, and seizing and detaining the game, &c., is, that he has "good cause to suspect" such party of having been engaged in poaching, i.e., "coming from any land where he shall have been unlawfully in search or pursuit of game;" and of having game, guns, &c., in his possession: and accordingly it has been held that it is not essential that the party should have been actually seen upon, or coming out of, land. See the cases of *Brown v. Turner*, *Evans v. Botterill*, and *Fuller v. Newland*, *post*, pp. 207—210). Whether his suspicions arise from his own observations, or from information derived from others, is immaterial. The constable may make the search in a highway, &c., at a distance from the place where the offender has trespassed, and may pursue and follow him till a convenient opportunity offers for the search, provided it be made within the constable's district, as to which see note⁷, p. 200.

"Any land." The words "any land" will embrace land out of as well as within the constable's district, and other than the place where the offender is searched or the conveyance is stopped, as the poaching of the game and the seizure will, in many cases, take place in different counties or districts, the justices' jurisdiction attaching, as will be seen by s. 1, *supra*, only to the place where the seizure is made.

"Unlawfully." The expression "unlawfully in search or pursuit of game" means a trespass by the offender on the land, of which he is neither the owner, or occupier, nor the game-keeper, or servant of either, nor having any *bonâ fide* right to kill the game thereon; the trespass being also without the consent of the owner, or of any person having the right of killing the game there, or of any person having any right to authorize the offender to enter or be upon the land for the purpose of searching for or pursuing game (see as to England 1 & 2 Will. 4, c. 32, s. 30, *ante*, p. 98; as to Scotland 2 & 3 Will. 4, c. 68, Chap. XVIII.; as to Ireland Chap. XIX.). The onus of proving any of these exceptions and exemptions, when alleged by way of defence, will lie on the defendant; and so, indeed, will any other defence set up to rebut the presumption which arises on the evidence of the constable and his witnesses, if any, for (as observed by *Erle*, C. J., in *Brown v. Turner* (*post*, p. 207), he must give a

eighteenth and nineteenth of her present majesty, 25 & 26 Vict. c. 114.
chapter one hundred and twenty-six, section nine, Sect. 2.
as far as regards England and Ireland,—and before
a sheriff or any two justices of the peace in Scot-
land;¹⁰

“And if such person shall have obtained such game by unlawfully going on any land in search or pursuit of game, or shall have used any such article or thing as aforesaid for unlawfully killing or taking game, or shall have been accessory thereto, such person shall, on being convicted thereof, forfeit and pay any sum not exceeding five pounds, and shall forfeit such game, guns, parts of guns, nets, and engines,¹¹—and the justices

reasonable account how he came by the game, &c. The expression “game unlawfully obtained,” means likewise game obtained by such trespass on the land from which the offender is suspected of coming, or on any other land.

The power to search the suspected persons and carts may be exercised either by day or by night, there being no restriction as to time in the act; but the constable cannot arrest the supposed offender, or detain him longer than is necessary for the purpose of the “search” (to stop and detain him being incident to the “search,”) and justifiable if no unnecessary violence is used, *Rex v. Amey*, R. & R. C. C. 500), even should game, &c., be found on him, and his name be unknown, and he should refuse on demand to disclose it. He can be summoned by a description of his person, or a warrant can be issued in the first instance.

If no game, or nets, &c., are found upon the search, the constable will not apply for a justice’s summons.

¹⁰ See the 18 & 19 Vict. c. 126, s. 9, *post*, p. 213, here referred to, which generally applies to England only, as well as the procedure in Scotland, *post*, p. 214.

¹¹ Practically there appear to be here created three The offences of which offenders so searched may be convicted :— created by the act.

1. Having obtained the game unlawfully by trespass, as explained *supra*:

2. Having used the gun, nets, &c., for unlawfully killing or taking game :

3. Having been accessory to either of these offences.

The special ingredients of each of these offences, in respect of the offender charged, will be the following :—

Offence 1. Being found on a highway, &c., and searched by a constable, and suspected by him of coming from

and if unlaw-
fully ob-
tained, pe-
nalty 5*l.*

Constable
may seize by
day or night,
and detain
offender.

of offences.

25 & 26 Vict. shall direct the same to be sold or destroyed,—and c. 114. the proceeds of such sale, with the amount of the Sect. 2.

**Ingredients
of offences.**

land where the offender has been unlawfully in search or pursuit of game, and game being found either in his personal possession or in a cart accompanying him,—which game the convicting justices deem the offender to have obtained by unlawfully going on the same or on other land.

Offence 2. Being found in a highway, &c., and searched by a constable, and suspected by him of coming from land where the offender has been unlawfully in search or pursuit of game, and any gun, nets, or engines, &c., ordinarily used for killing or taking game, being found either in his personal possession or in a cart accompanying him,—which gun, nets, &c., the convicting justices deem the offender to have used for unlawfully killing or taking game on the same or on other land.

Offence 3. Being found in a highway, &c., and searched by a constable, and suspected by him of aiding or abetting some other person, suspected of coming from land where such other person has been unlawfully in search or pursuit of game, and any game (wherever obtained), or any guns, nets, &c., being found either in the personal possession of such other person or the offender (the aider), or in a cart accompanying either,—the convicting justices deeming the offender to have been aiding and abetting such other person, and accessory to his offence of unlawfully being on land, or of using guns, nets, &c.

**Justices to
judge of bona
fides of con-
stable's pro-
ceedings.**

The justices must necessarily be the sole judges of the bona fides of the constable's proceedings (he being competent to give evidence), and of the reasonableness of his grounds of suspicion against the defendant, who is incompetent as a witness; and in determining the case they are to apply the ordinary rules of evidence, and may infer, in the absence of any rational explanation, from the surrounding circumstances, that the person charged has committed the offence imputed to him, the rule in these summary convictions being that a conviction will be supported if there is such evidence as would have been sufficient to have been left to a jury, supposing the act had directed a trial before a jury (see per Williams, J., *post*, p. 209; and Oke's "Synopsis," 8th ed., p. 184). [Vide the procedure, *post*, p. 211, and form of conviction, No. 85, *post*, p. 218.]

**Other pe-
nalties in-**

The provisions of the act being of a *cumulative* character, the offender will, in addition to the penalty and forfeiture

penalty, to be paid to the treasurer of the county ^{25 & 26 Vict.}
or borough where the conviction takes place ; ^{c. 114.}

“ And no person who, by direction of a justice in writing, shall sell any game so seized shall be liable to any penalty for such sale ; ”¹²

“ And if no conviction takes place, the game or any such article or thing as aforesaid, or the value thereof, shall be restored to the person from whom it had been seized.”

Sect. 3. “ Any penalty under this act shall be recovered and enforced in England in the same manner as penalties under the act first and second William the Fourth, chapter thirty-two,—and in Scotland under the act second and third William the Fourth, chapter sixty-eight,—and in Ireland under the Petty Sessions, Ireland Act, 1851, when not otherwise directed in this act.”¹³

Sect. 4. “ The powers and provisions of the act of the eleventh and twelfth years of her present majesty, chapter forty-three, shall extend and apply to this act, and to all proceedings, matters, and things to be taken, had and done, and to all persons to be proceeded against or taking proceedings under this act.”¹⁴

here imposed, be liable in some cases, by the usual prosecutions, if the evidence should warrant a conviction, to other offenders. penalties, in the previous acts, for instance, for trespassing (1 & 2 Will. 4, c. 32, s. 30, Chap. VII.), for killing without a licence (*Id.* s. 23, Chap. VIII., and 23 & 24 Vict. c. 90, s. 4, Chap. V.), for taking game out of season (1 & 2 Will. 4, c. 32, s. 3, Chap. III.), as well as to imprisonment under the Night Poaching Acts (Chap. XIII.). See further Chap. XVIII. as to Scotland, and Chap. XIX. as to Ireland.

¹² Any one justice, whether he be one of the convicting justices or not, after an adjudication of forfeiture of the game, guns, &c., has been made by the convicting justices, may, in writing, direct any person to sell the game; and the provision in the text will indemnify the seller from the penalties under the previous laws for selling game without the requisite licences (*ante*, pp. 186, 146). [Vide form of direction, No. 87, *post*, p. 218.]

¹³ Vide the procedure, *post*, p. 211.

¹⁴ Vide the procedure, *post*, p. 211.

25 & 26 Vict. c. 114.

No conviction shall be quashed for want of form or removed by certiorari.

Sect. 5.

Sect. 5. “No conviction or order made under this act, or adjudication made on appeal therefrom, shall be quashed for want of form, or be removed by certiorari or otherwise into any of her majesty’s superior courts of record ;—and no warrant of commitment shall be held void by reason of any defect therein, provided it be therein alleged that the party has been convicted, and there be a good and valid conviction to sustain the same.”¹⁵

Power of appeal.

Sect. 6.

Sect. 6. “Any person who shall think himself aggrieved by any such summary conviction may appeal to the next court of general or quarter sessions which shall be holden not less than twelve days after the day of such conviction for the county, riding, division or borough wherein the cause of complaint shall have arisen,—

Notice of appeal and recognizances.

“Provided that such person shall give to the complainant a notice in writing of such appeal, and of the cause and matter thereof, within three days after such conviction, and seven clear days at the least before such sessions, and shall, within three days enter into a recognizance, or bond of caution in Scotland, with a sufficient surety, before a justice of the peace, conditioned personally to appear at the said sessions, and to try such appeal, and to abide the judgment of the court thereupon, and to pay such costs as shall be awarded by the court ;—

Sessions to determine appeal.

“And the court at such sessions shall hear and determine the matter of appeal, and shall make such order therein, with or without costs to either party, as to the court shall seem fit, and shall, if necessary, issue process for enforcing such judgment.”¹⁶

¹⁵ This section is precisely similar to 1 & 2 Will. 4, c. 32, s. 45, as to England (*ante*, p. 161), and see 2 & 3 Will. 4, c. 68, s. 15, as to Scotland (Chap. XVIII).

Appeal to superior court also.

¹⁶ This section is like 1 & 2 Will. 4, c. 32, s. 44, as to England (*ante*, p. 160), 2 & 3 Will. 4, c. 68, s. 14, as to Scotland (Chap. XVIII.), and 14 & 15 Vict. c. 93, s. 24, as to Ireland, notwithstanding s. 42 says it shall not apply to the game acts.

2. DECISIONS OF THE SUPERIOR COURTS.

There have been three decisions of the superior courts upon cases under the act 25 & 26 Vict. c. 114, submitted to them by the justices pursuant to 20 & 21 Vict. c. 43, upon the point of law whether it is essential to a conviction that the persons charged should have been actually seen upon, or coming out of, land where they were in pursuit of game; and it was held in the negative by the Common Pleas in the case of *Brown and others v. Turner*, on January 24th, 1863, and confirmed by the Queen's Bench in *Evans v. Botterill*, on April 29th, 1863, and *Fuller v. Newland*, on June 3rd, 1863;—the courts holding, that the justices may infer, from the circumstances and facts of the case as proved before them, whether or not the accused had been unlawfully on land in the pursuit of game.

The facts in the first case, *Brown and others v. Turner* (32 L. J. (N. S.) M. C. 106; 27 J. P. 103; S. C. *Reg. v. Turner*, 7 Law T., N. S. 683), before the Court of Common Pleas, will sufficiently appear in the judgment of the Chief Justice ERLE, which, with that of Mr. Justice WILLIAMS, we give *in extenso* (from 27 J. P. 103, which is fuller than in the L. J.):—

ERLE, C. J.—This is an appeal from a conviction by justices under the 2nd section of the New Game Act, 25 & 26 Vict. c. 114. There are four appellants, and as to three of them I am of opinion that the conviction should be confirmed. The 2nd section of the statute enacts—(His Lordship here stated the effect of the section, which is given *supra*). Now these three men are properly convicted, notwithstanding there was no eye witness that they had been actually seen on any land in the pursuit of game. I am of

There is another appeal, which is given to defendant in England and Ireland, as well as to the constable, *i.e.*, to a superior court, if the justices' determination rests on a question of law only, under the 20 & 21 Vict. c. 43, but the 20 & 21 Vict. appeal to the quarter sessions will thereby be abandoned c. 43. (*ante*, pp. 154, 155). It is expressly enacted that this act shall not apply to Scotland, &c. (s. 15).

1. *Decisions
of the Supe-
rior Courts.*

*Decisions of
the Superior
Courts.*

*Brown v.
Turner.*

that opinion on a principle of evidence well known and established—that of inference arising from facts. The justices have as much right to apply the ordinary rules of evidence in this respect, and to infer from the surrounding circumstances that the persons charged have committed the offence imputed to them, as have any other tribunal. Circumstantial evidence is an important branch of the law of evidence, and frequently to be relied on equally if not in a greater degree than other evidence. *I am clearly of opinion that it was not necessary for a conviction that the men should have been seen actually committing the offence.* The circumstantial evidence is here sufficiently strong. Four men were seen together at an early hour in the morning of Sunday walking on the highroad, one of whom, upon being searched, is found to have five dead wild rabbits upon him freshly killed and still warm. Another is shown to have sold at a beer house a wild rabbit early that morning. The third is found with a net in his pocket suitable for taking rabbits, with rabbit's fur upon it, showing it had been recently used for taking rabbits, and rabbit's fur in his pockets, and fresh blood upon the cuffs of his coat. All these were circumstances to be laid before the justices with the view of showing that these men had been engaged in killing rabbits, and strong evidence from which they might infer that the appellants had been *unlawfully on some land* in the pursuit and capture of rabbits. If they had no land of their own it would be puerile to suppose that they stumbled upon six rabbits on the high road, and had there captured them. It has been urged that the 1 & 2 Will. 4, c. 32, s. 30, says, "If any person whatsoever shall commit any trespass by entering or being in the day-time upon any land in search or pursuit of game," &c.¹⁷ But here, the legislature has intentionally departed from that, intending, as it appears to me, to give larger powers. If it had been requisite to a conviction that the party should actually have been seen upon the land, the former Game Act would have been sufficient. The mere finding the articles under such circumstances is under this act presumptive evidence of guilt, unless the party suspected gave a reasonable account how he came by them. I do not think it is necessary, in order to make out the case, to prove whose property the rabbits were, as in

¹⁷ *Query*, s. 31, or 36, *ante*, pp. 102, 105, where any person shall be "found" on any land, &c., he may be apprehended, &c., &c.—Ed.

on indictment for larceny. With respect to the appellant *Milbourne*, I do not think the evidence against him is conclusive. The only evidence against him is that he was seen at an early hour in the morning upon the high road, in company with the other three. He might consistently with the evidence have joined them after the offence had been committed: if he had been seen going out as well as returning with them, it might have been otherwise. The conviction will be affirmed in respect to all the appellants except *Milbourne*.

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WILLIAMS, J.—I am entirely of the same opinion. The question, as it seem to me, is the same as if, supposing the act had directed, instead of a proceeding by summary conviction, a trial before a jury, and the counsel for the prisoners had said “there is no case for the jury.” The judge would say, “there is no case against *Milbourne*, but a sufficient case against the others.” There is a possession of wild rabbits freshly killed. Possession, it may be said, is not enough. But then you may take into consideration the conduct of the prisoners, and that seems only consistent with a consciousness on their part that the rabbits were improperly obtained, and this supplies the deficiency.

WILLES and KEATING, Js., concurred.

Conviction affirmed, except in the case of *Milbourne*.

In the second case, *Evans v. Botterill* (8 Law *Evans v.
Botterill.* T., N. S. 272; 27 J. P. 292), before the Court of Queen's Bench, the judgment was delivered by **COCKBURN, C. J.**, as follows:—

“In this enactment of 25 & 26 Vict. c. 114, s. 2, there seem to be two heads of offence. One is going on land unlawfully and taking game; the other is having in one's possession, and having used implements for taking game unlawfully. As to the first head, it has been made a question whether it is necessary to show that the defendant was on some particular land for the purpose of unlawfully taking the game. This is no doubt a difficult question; but the case of *Brown v. Turner* seems a conclusive authority, that the fact of persons being found in possession of game, under certain circumstances, will warrant the inference that they had unlawfully taken such game on some land or other. Independently however of that, the present case seems to come within the second head of the offence, and there was evidence to justify the justices in finding the defendant

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Courts.*

guilty of that offence. If there was evidence on the latter head, the justices need not have embarrassed themselves with the difficult question on the first head, as to how far evidence must be given of the specific land from which the game was taken. I think there was evidence at all events to justify the inference that the second offence had been committed.¹⁸ Of course I assume that the information properly charges the offence. Therefore, on one or other of these heads, I think the justices would have been warranted in convicting."

CROMPTON, BLACKBURN and MELLOR, J.s., concurred.

*Fuller v.
Newland.*

In the third case,¹⁹ *Fuller v. Newland* (27 J. P. 406), before the Court of Queen's Bench, where the question put by the justices was—"whether to justify convicting of the appellant it was necessary to prove the actual trespassing of the appellant on land in the parish in pursuit of game, and also to prove that the game found in and upon his (the appellant's) cart was the game unlawfully obtained by such trespass,"—and the Lord Chief Justice said, "that it certainly was necessary to prove that the man had been trespassing on some land in pursuit of game, and had unlawfully taken game there, but *circumstantial evidence* was sufficient, and in this case there was some legal evidence on both these points, and the court had no jurisdiction to determine whether it was such as should or should

¹⁸ The simple facts as proved were that a constable, from information received, watched and stopped the defendants early on a Sunday in a highway, carrying bags, and having searched them, found in the bags one hare and fifteen rabbits, seven nets, and several stakes used for fastening down nets, which the constable seized and detained; but no evidence was given of either of the parties having been on any land in search of game, or of using any net, and, in consequence, the justices dismissed the information.

¹⁹ The facts were these: a cart had been seen at an early hour in the morning in a green lane on land of a Mr. Birch, and close to one of his plantations, without any one in it. And not long afterwards the cart was stopped by the police on the highway at no great distance, the appellant, a one-legged man, driving it, and some fresh game being in it.

not be sufficient to satisfy the justices (as a jury) *Decisions of the Superior Courts.* of the facts to be proved. There was no power, so to speak, to grant a new trial if dissatisfied with the verdict of the justices. The court could only decide a question of law—*i. e.*, whether there was any legal evidence on which to convict, and could not enter into the sufficiency of the evidence as a question of fact.” [Costs were not given against the appellant.]

The High Court of Justiciary in Scotland has *Scotch decision.* recently come to the same conclusion as the English courts upon the act, and decided, upon an appeal in the case of *Melville v. Reid*, brought before that court by suspension, against the judgment of the sheriff substitute of Roxburghshire, that a person found upon the public road with game, and an engine used for killing game in his possession, may, if brought to trial, be convicted by the sheriff, or by a justice of the peace, of an offence against the Poaching Prevention Act, whether or not there is any direct evidence to show that the game has been obtained upon land, or that the accused has been upon land, —merely, in fact, if the circumstances of the case warrant the judge in *inferring* that the game has been obtained on *some* land.—(*Teviotdale Record.*)

3. PROCEDURE FOR PENALTIES THROUGHOUT THE *3. Procedure.* UNITED KINGDOM.

The section 1, in the definition of “justices,” *ante*, p. 199, gives jurisdiction under the act to justices of the peace [and it is presumed in Scotland the sheriff also, s. 2] where the game, guns, nets, &c., are “found” upon the offender (see note ⁶, *ante*, p. 200).

By sect. 5, *ante*, p. 206, no conviction is to be *Convictions.* quashed on account of defect of form.

As to appeal, see sect. 6, *ante*, p. 206. *Appeal.*

By sect. 2 the penalty recovered is to be paid to the *Application of penalty.* treasurer of the county or borough, and no portion

Procedure. of it will, therefore, be payable to the constable as informer, notwithstanding the Game Acts, and the acts as to procedure in England, Scotland and Ireland, direct otherwise.

^{11 & 12 Vict.} _{c. 43.} The effect of the enactment in sect. 4, *ante*, p. 205, is to apply the English act 11 & 12 Vict. c. 43, in matters of procedure not provided in the acts incorporated by s. 3, to the *whole* of the United Kingdom as done by the annual Army and Navy Mutiny Acts. See analysis of 11 & 12 Vict. c. 43, *ante*, pp. 127, 128, Chap. IX.

The following apply to parts of the United Kingdom respectively :—

—England.

(1. *In England.*)

Sect. 3, *ante*, p. 205, applies the 1 & 2 Will. 4, c. 32, to the recovery of the penalty when not otherwise directed ; and sect. 4, *ante*, p. 205, extends the 11 & 12 Vict. c. 43, to the proceedings. It follows from these that all the provisions of the 1 & 2 Will. 4, c. 32, as to procedure, fully treated of in Chap. XII., *ante*, pp. 150—165, (except as to the application of the penalty, the certiorari and the appeal, which are herein provided,) are incorporated with this act of 25 & 26 Vict. c. 114, of which the following is an analysis :—

- ^{1 & 2 Will. 4.} _{c. 32.}
1. The information must be laid on oath within three calendar months (1 & 2 Will. 4, c. 32, s. 41, *ante*, p. 155).
 2. A summons or warrant may be issued (Id. *ante*, p. 156).
 3. A justice may issue summonses to witnesses (s. 40, *ante*, p. 156).
 4. To adjudge costs to be paid with the penalty (s. 38, *ante*, p. 158).
 5. Imprisonment with or without hard labour for not exceeding two calendar months in default of payment of penalty and costs (Id.).

^{11 & 12 Vict.} _{c. 43.} As to the 11 & 12 Vict. c. 43, the provisions

of it, which are not incorporated from 1 & 2 Will. *Procedure.* c. 32, are:—

1. The hearing of charges must be in open court, ^{11 & 12 Vict.} c. 43.
where either party may appear by counsel or attorney (s. 12); and it may be *ex parte* on proof of service of summons (s. 13); or if constable do not appear, the information may be dismissed with costs to be paid by him (s. 14).
2. Costs may be ordered to be paid besides the penalty (s. 18).
3. The form of conviction to be used (s. 17; see form No. 85, *post*, p. 218).
4. Any one justice of the same jurisdiction may enforce payment (s. 29; see form No. 86, *post*, p. 218).
5. Defendant to pay the costs of his being conveyed to prison (s. 23).
6. Clerk to convicting justices to pay over the penalties (s. 31).

Sect. 2, *ante*, pp. 202, 203, provides that cases shall, as far as regards England and Ireland, be heard in petty sessions, as provided in the Criminal Justice Act, 18 & 19 Vict. c. 126, s. 9. That sec- ^{18 & 19 Vict.} c. 126, s. 9.
tion enacts, that—

“Every petty sessions for the purposes of this act shall be an open public court, and shall be the petty sessions holden for a petty sessional division—[This, however, by 19 & 20 Vict. c. 118, is not to ‘extend or be applicable to petty sessions holden in or for the liberties of the Cinque Ports or any part thereof, or to any other liberty or place not forming and not being within a petty sessional division’]—and a written or printed notice of the days and hours for holding such petty sessions shall be posted or affixed by the clerk to the justices of petty sessions upon the outside of some conspicuous part of the building or place where the same are held.” [*Vide* Form of Notice, No. 84, p. 217.]

This provision will prohibit justices from hearing charges under the act at the residence of either justice, or at any other place than the regularly ap-

Procedure. pointed place of meeting; but a police magistrate of the metropolis, or a stipendiary magistrate, may act alone (18 & 19 Vict. c. 126, s. 16; 21 & 22 Vict. c. 73, s. 2).

—Scotland.

(2. *In Scotland.*)

Sect. 2, *ante*, p. 203, gives jurisdiction to hear cases under the act to “a sheriff or any two justices of the peace,” and by s. 1 to these functionaries where the game, &c., is “found;” and sect. 3, *ante*, p. 205, applies the 2 & 3 Will. 4, c. 68, to the recovery of the penalty when not otherwise directed. Therefore, all the provisions of the 2 & 3 Will. 4, c. 68, given at length in Chap. XVIII., Sect. 9 (except as to the application of the penalty, the certiorari and the appeal, which are herein provided), are incorporated with this act of 25 & 26 Vict. c. 114, of which the following is an epitome:—

2 & 3 Will. 4,
c. 68.

1. The prosecution must be commenced within three calendar months (2 & 3 Will. 4, c. 68, s. 11).
2. On a charge upon oath a justice may issue a summons, or warrant on disobedience or if the party is likely to abscond (*Id.*)
3. A justice may compel attendance of witnesses (s. 10).
4. Justices to adjudge payment of expenses with penalty, and imprison in default of payment for not exceeding two calendar months (s. 8).
5. Conviction to be in form given (s. 9); to be returned to sessions (s. 13), and not to be removed by certiorari (s. 15).
6. There is an appeal allowed to the quarter sessions (s. 14); but not to a superior court under 20 & 21 Vict. c. 43, *ante*, p. 207, note.
7. Penalties are to be paid to the moderator or officer of the kirk session for the poor (s. 7). Other provisions needed are supplied by 11 & 12

Vict. c. 43, by virtue of s. 4, *ante*, p. 205; but this *Procedure*. act is said to be inapplicable to that part of the empire, because of the dissimilarity of the forms in use and the legal technology.

(3. *In Ireland.*)

—Ireland.

Sect. 3, *ante*, p. 205, applies the Petty Sessions, Ireland, Act, 1851 (14 & 15 Vict. c. 93), to the recovery of the penalty when not otherwise directed in 25 & 26 Vict. c. 114, although s. 42 of the first named and first passed statute enacts that it shall not extend to any act "relating to the preservation of game," and, therefore, all of its provisions analysed in Chap. IX., *ante*, p. 128 (except as to the application of the penalty, the certiorari and the appeal to quarter sessions, referred to in paragraphs there numbered 11 and 12), are incorporated with this act of 25 & 26 Vict. c. 114.

By sect. 2 the English act 18 & 19 Vict. c. 126, 18 & 19 Vict. s. 9, *ante*, p. 213, is applied to Ireland for the purposes of the 25 & 26 Vict. c. 114. See also 20 & 21 Vict. c. 43, named, *ante*, p. 207, note.

4. FORMS.²⁰

For that he [the said A. B.] on &c., at &c., was lawfully searched by one C. D., a constable for the [west division of the] said [county], in a certain highway [or street, or public place], there called —, the said constable then having good cause to suspect the said A. B. of coming [or of aiding and abetting one E. F., whom he has good cause to suspect of coming] from certain land [there, or in the parish of —, &c., called —, in the possession and occupation of F. G.], where the said A. B. had been then unlawfully in search and pursuit of game, and of having in his posses-

25 & 26 Vict. c. 114.
80. Statement of offence for having possession of game, guns, &c. (for the information or conviction).

²⁰ These forms are to be used in filling up the general forms of information, summonses, &c., in Chap. XII., *ante*, pp. 162—165, used in England.

25 & 26 Vict. c. 114. sion game unlawfully obtained*, [and guns, nets and engines used for the killing and taking game], there being then and there found upon the said A. B. by the said constable upon such search certain game, to wit, [three hares and ten eggs of pheasants, or as the case may be].

[and one gun, part of a gun, and three nets or engines, or as the case may be, used as aforesaid], (which the said constable then and there seized and detained), he the said A. B. [or E. F., where an aider is charged] having unlawfully obtained the said game by unlawfully going on certain land [or the land aforesaid] in search and pursuit of game,

[or he the said A. B. having unlawfully used the said gun, nets and engines for unlawfully killing and taking game], **

[or, in the case of an aider, from the two asterisks**, he the said A. B. having been then and there unlawfully aiding and abetting and accessory to the said offence of the said E. F.],

contrary to the statute 25 & 26 Vict. c. 114, s. 2.

81. The like, for summons to the defendant.

For that you, on the — day of —, at the parish of —, in the said [county], were lawfully searched by the said informant, a constable for the [west division of the] said [county], in a certain highway [or street, or public place] there, called —, he having good cause to suspect you [of aiding and abetting one E. F., whom he had good cause to suspect].

of coming from certain land [there, or in the parish of —, &c., in the occupation of F. G.], where you [or the said E. F.] had been unlawfully in search and pursuit of game, and of having in your possession game unlawfully obtained*, [and a gun, nets and engines used for the killing and taking game],

there being then found upon you certain game, to wit, [three hares and ten eggs of pheasants, or as the case may be],

[and one gun, part of a gun, and three nets or engines used as aforesaid],

(which the said constable then lawfully seized and detained)*, you having unlawfully obtained the said game by unlawfully going on certain land there in search and pursuit of game,

[or you having unlawfully used the said gun, nets and engines for unlawfully killing and taking game],

[or you having been unlawfully aiding and abetting

and accessory to the offence of the said E. F. who 25 & 26 Vict.
had obtained the said game by unlawfully going c. 114.
&c., or who had unlawfully used the said gun,
&c., as in the offence against the principal],
contrary to the statute 25 & 26 Vict. c. 114, s. 2.

*Proceed to the single asterisk** in form, No. 80, *supra*, 82. State-
then: and the said constable having them and there also ment of of-
lawfully stopped and detained a certain cart [or —] in fence for
and upon which he had good cause to suspect game and having game
guns, nets and engines used for the killing and taking game with a cart
were then being carried by the said A. B., there being (for the in-
then and there found [upon the said A. B., and] in and formation or
upon the said cart, certain game, to wit, [ten rabbits, three conviction).
pheasants, ten eggs of pheasants, one gun, and ten nets and
engines, or as the case may be, used as aforesaid,] (which
the said constable then and there seized and detained); he
the said A. B., [&c. conclude as in the form, No. 80,
supra.]

*Proceed to the first asterisk** in form No. 81, *supra*, 83. The like,
then: and the said constable having also lawfully stopped for summons
and searched a certain cart [or —], in and upon which to the defend-
he had good cause to suspect game, guns, nets and engines ant.
used for the killing and taking game were then being carried
by you, there was then found upon [you and] the said cart,
certain game, to wit, [ten rabbits, three pheasants, ten eggs
of pheasants, one gun, and ten nets and engines, or as the case
may be], used as aforesaid, (which the said constable seized
and detained), you having, &c. [describing the particular
offence from the second asterisk* in the form No. 81], con-
trary to the statute 25 & 26 Vict. c. 114, s. 2.

County of —.
Petty Sessional Division of —.

84. Notice to
be affixed of
petty ses-
sions.

Notice is hereby given, that petty sessions for the hearing
of cases under the statute 25 & 26 Vict. c. 114, intituled
“An Act for the Prevention of Poaching,” will be holden
for the above division in this building, and in open court,
every Tuesday, at the hour of — o’clock in the forenoon
precisely [or as the case may be].

— Clerks to the Justices of
Petty Sessions.

L

25 & 26 Vict. c. 114. } Be it remembered, that on the — day of —, to wit, { in the year of our Lord —, at —, in the said 85. Special conviction in petty sessions (11 & 12 Vict. c. 43, No. 56, Chap. XII., p. 163). Assembled in petty sessions holden for the petty sessional division of —, in the same [county], (within which division the parish of — hereinafter mentioned is situated,) for that he the said A. B., on &c., at &c.

[here state the offence as in the examples, No. 80 or 82, supra];

and we adjudge the said A. B. for his said offence to forfeit and pay the sum of — [stating the penalty], to be paid and applied according to law, and also to pay to the said C. D. the sum of —, for his costs in this behalf; and if the said several sums be not paid forthwith [or on or before — next], we adjudge the said A. B. to be imprisoned in the [house of correction] at —, in the said [county], [and there kept to hard labour], for the space of —, unless the said several sums, [and the costs and charges of conveying the said A. B. to the said house of correction], shall be sooner paid; and we adjudge the said A. B. to forfeit the said game, [guns, nets and engines,] so seized as aforesaid, and we hereby direct the said game, except the said eggs of pheasants, to be sold, and the said eggs of pheasants, guns, nets and engines to be destroyed [or as the case may be], and the proceeds of such sale, with the amount of the penalty (if paid), to be paid and applied as directed by the statutes in that behalf.

Given under our hands and seals the day and year first above mentioned, at —, in the [county] aforesaid.

J. S. (L.S.)
J. L. (L.S.)

86. Commitment of defendant (Sched. O 1 to 11 & 12 Vict. c. 43). Same as No. 57, in Chap. XII., ante, p. 164, adapted to Conviction, No. 85, supra, but omitting the Adjudication of Forfeiture of Game, &c., and the Direction to sell it, &c.

87. Justices' direction to constable to sell game. — } To C. D., one of the constables of the [west to wit, { division of the] [county] of —.

Whereas A. B., of &c., has this day been duly convicted before [me and J. L., esquire, being] two of her Majesty's justices of the peace for the said [county], pursuant to the statute 25 & 26 Vict. c. 114, intituled "An Act for the Prevention of Poaching," of having unlawfully obtained game, to wit, —, by unlawfully going on certain land

[in the parish of ——, in the said *county*], in search and 25 & 26 Vict.
pursuit of game,
c. 114.

[or of having unlawfully used a certain gun, and
certain nets and engines for unlawfully killing and
taking game].

[or of having aided and been accessory to one E. F.,
who had unlawfully obtained, or unlawfully used,
&c. &c.],

and in and by the said conviction it was adjudged that the
said A. B. should forfeit the said game, [guns, nets and en-
gines,] theretofore lawfully seized by you, and that the said
game be sold: I do, therefore, in pursuance of the said Act,
order you the said constable (you having the said game now
in your custody and possession) to sell the said game, and
that you pay the proceeds of such sale to J. B., the clerk of
the justices of the peace for the petty sessional division of
——, in the said [county], that he may pay and apply the
same as by law directed.

Given under my hand this —— day of ——, 186—.
J. S.

CHAPTER XVII.

PROCEEDINGS FOR PENALTIES UNDER REVENUE LAWS THROUGHOUT THE UNITED KINGDOM.

The revenue penalties. WE have before shown, in other parts of this work, what are revenue penalties, viz. :—

Killing game, deer, &c., or using a dog, gun, &c. for that purpose, without an excise licence (23 & 24 Vict. c. 90, s. 4, *ante*, p. 62, or in Ireland under 5 & 6 Vict. c. 81, s. 5, *ante*, p. 75):

Not producing licence to inland revenue officer or gamekeeper, &c., when sporting, or refusing to declare name, residence, &c. (23 & 24 Vict. c. 90, s. 10, *ante*, p. 72; or in Ireland under 5 & 6 Vict. c. 81, s. 8, *ante*, p. 76).

Dealing in game without the justices' licence or an excise licence (*ante*, pp. 136, 146, 147).

It will have been seen also (*ante*, p. 62), that these penalties are, by 23 & 24 Vict. c. 90, s. 3, to be recovered as penalties under the excise acts; but, as these latter acts are very numerous and lengthy, and none of the penalties can be recovered except by the direction of the Commissioners of Inland Revenue, a reference here to the principal provisions will be sufficient for all practical purposes.

The excise Acts. The principal statutes regulating summary proceedings for penalties are,—the 7 & 8 Geo. 4, c. 53; 4 & 5 Will. 4, c. 51; 4 Vict. c. 20; 11 & 12 Vict. ccs. 118, 121; and 15 & 16 Vict. c. 61.¹ The

Information and time.

¹ The general act, 11 & 12 Vict. c. 48, regulating summary proceedings before justices, does not generally apply to cases under the excise laws (s. 35), for which the officers bring the forms. By 26 & 27 Vict. c. 77, however, certain provisions of 11 & 12 Vict. c. 42 (incorporated with 11 & 12 Vict. c.

information for an excise penalty or forfeiture incurred within the limits of the chief office [as defined by 7 & 8 Geo. 4, c. 53, s. 14] must be exhibited before three commissioners, or a metropolitan police magistrate, and elsewhere before one or more justices of the peace (7 & 8 Geo. 4, c. 53, s. 65; 15 & 16 Vict. c. 61, s. 1),² by an officer duly authorized by the commissioners (7 & 8 Geo. 4, c. 53, ss. 17, 61; 4 & 5 Will. 4, c. 51, s. 28), and within six calendar months after the offence committed (11 & 12 Vict. c. 118, s. 3). Notice to be given within a week afterwards and summons to be served ten days before the hearing (4 & 5 Will. 4, c. 51, s. 19), service need not be personal, but at the place of business or residence of the offender (*Id.*); and it may be made by any excise officer or other person (4 Vict. c. 20, s. 31). Cases may be heard *ex parte* after summons (7 & 8 Geo. 4, c. 53, ss. 65, 73). Persons taken before a justice may be remanded for eight days, or admitted to bail (23 & 24 Vict. c. 113, s. 39); and by 24 & 25 Vict. c. 91, s. 46, persons in prison against whom informations are exhibited may be brought up by *habeas corpus*

Notice and summons.

Remanding.

43), authorizing justices of adjoining counties to act in one for the other, or justices for a county to act in a city, &c., adjoining, will apply to the offences in this chapter. The act as to procedure in petty sessions in Ireland, 14 & 15 Vict. c. 93, is not to apply to excise cases, except that the forms in it may be used in those cases (s. 42); but some of its provisions, as well as of those in the Irish Act, 14 & 15 Vict. c. 90, will apply to appeals under the Excise Acts.

² Notwithstanding some of the offences under s. 10, *ante*, pp. 72, 73, may be witnessed by the lord of a manor, his game-keeper or the occupier, an officer of inland revenue alone can prefer the information and prosecute for the penalties. By the printed instructions of the board of inland revenue, issued under the 23 & 24 Vict. c. 90, the collector or supervisor is, in all cases in which officers detect any person violating the law, or receive information thereof from other parties, immediately to investigate the circumstances and state all the facts to the board. Officers are also “to endeavour to detect persons sporting without proper licence” (Instructions, pp. 10, 11).

Hearing.

issued from the Court of Exchequer at the hearing of such information. The commissioners may determine informations at chief office or elsewhere within its limits (15 & 16 Vict. c. 61, s. 2). Two or more justices to meet every three months or oftener to adjudge excise cases (7 & 8 Geo. 4, c. 53, s. 67). Regulations in case of the death or absence of any justice, or of the death of the prosecuting officer during proceedings (Id.; 4 & 5 Will. 4, c. 51, s. 22). The defendant is not a competent witness (18 & 19 Vict. c. 96, s. 36, amending 14 & 15 Vict. c. 99, s. 2). General powers of justices are extended to excise cases (7 & 8 Geo. 4, c. 53, s. 67). No officer of excise to act as a justice in excise cases, nor any excise trader in any case relating to his trade (Id. s. 68), but they may conduct the proceedings before justices notwithstanding they are not attorneys (15 & 16 Vict. c. 61, s. 3). Commissioners and justices to proceed to hearing and judgment on the merits without regard to defects in form (7 & 8 Geo. 4, c. 53, s. 73).

Witnesses.

Witnesses summoned by justices neglecting to appear and give evidence to forfeit 50*l.* (s. 74, and see 23 & 24 Vict. c. 114, s. 198). If a defendant be in prison, judgment may be given after summons (7 & 8 Geo. 4, c. 53, s. 77; but see 24 & 25 Vict. c. 91, s. 46); persons incur penalties jointly or severally according as they may be prosecuted by order of the commissioners (7 & 8 Geo. 4, c. 53, s. 70).

Penalties

The commissioners or justices on hearing may mitigate any penalty to one-fourth (s. 78; 4 & 5 Will. 4, c. 51, s. 20); and the board may further mitigate or entirely remit the penalty (7 & 8 Geo. 4, c. 53, s. 78). There is no power to award costs to either party under the excise laws before justices, either in petty or quarter sessions, the 18 & 19 Vict. c. 90, allowing costs in crown suits, applying only to prosecutions for penalties in the Exchequer, in which the attorney-general is the prosecutor (*Reg. v. Beadle*, 7 El. & Bl. 492; 29 Law T. Rep. 76, Q. B.). Warrants to be granted

and mitigation.

for levying penalties (s. 86), in which a time for sale must be limited (s. 88). Penalty and expenses to be deducted from the sale, and the overplus returned (s. 89). Where sufficient distress cannot be found a body warrant may be issued to commit the offender to gaol, to remain until satisfaction be made of the judgment, or until ordered by the commissioners to be liberated or discharged (s. 90). A fresh warrant of distress may be issued when goods are found after the issue or execution of arrest warrant (s. 91). Warrants to be executed in any part of the United Kingdom upon endorsement (s. 92). In Ireland, see additional provisions in 14 & 15 Vict. c. 90.

By the 11 & 12 Vict. c. 121, s. 28, no officer of excise is to have any interest in penalties or forfeitures under any law of excise, which are to be paid to the Commissioners of Excise (16 & 17 Vict. c. 107, s. 282; see 23 & 24 Vict. c. 114, s. 199). In Ireland, see 14 & 15 Vict. c. 90, ss. 13, 14.

Persons aggrieved by judgment of justices may appeal to the quarter sessions (7 & 8 Geo. 4, c. 53, s. 82); but against the judgment of the commissioners appeal must be made to the Barons of the Exchequer (4 Vict. c. 20, s. 26). Notice of appeal and notice of trial to be given, and deposit made of amount of penalty adjudged within three days after adjudication (7 & 8 Geo. 4, c. 53, s. 83). If there shall not be twenty days between giving notice and the next sessions, the appeal to be to the following sessions (4 & 5 Will. 4, c. 51, s. 23). On hearing an appeal, the original evidence only to be examined (7 & 8 Geo. 4, c. 53, s. 84); but witnesses tendered for examination at the original hearing may be examined (4 & 5 Will. 4, c. 51, s. 24). Power of mitigation, or to state a case for the Exchequer (7 & 8 Geo. 4, c. 53, s. 84); but the quarter sessions have no power to award costs to either party (*Reg. v. Beadle, supra*). Proceedings on determination of appeal (ss. 85, 87). In Ireland, there are some supplemental provisions in the 14 & 15 Vict. c. 90,

Enforcing
penalties.

Application
of penalties.

Appeal to
quarter ses-
sions.

Appeal to
quarter ses-
sions.

Appeal to
superior
court.

s. 9, and also in 14 & 15 Vict. c. 93, which need attention (Levinge's Game Laws, pp. 84—88).

In addition to these, the general act 20 & 21 Vict. c. 43 (*ante*, pp. 154, 155), applicable to England and Ireland, allows an appeal to a superior court by the person convicted, or by the informer if his information is dismissed, when the justices' decision is erroneous on a point of law (Oke's "Synopsis," 8th ed. pp. 182—190).



FORMS.

The General Forms in use by the Inland Revenue authorities are given in Oke's "Magisterial Formulist," 3rd ed., pp. 413—419.



CHAPTER XVIII.

THE GAME LAWS OF SCOTLAND.

THE previous Chapters of this work, viz., as to certain previous chapters applicable to Scotland.
licences to kill game, and deer, &c. (V. *ante*, p. 58); unlawfully taking game by army and navy officers (VIII. *ante*, pp. 118, 119); placing poisoned grain &c., on ground, &c. (IX. *ante*, pp. 124—128); licences to deal in game (X. *ante*, p. 132); buying and selling game by other than licensed dealers (XI. *ante*, p. 145); poaching by night (XIII. *ante*, p. 167); The Poaching Prevention Act (XVI. *ante*, p. 196); and procedure for penalties under revenue laws (XVII. *ante*, p. 220),—apply to Scotland as well as to England and Ireland. In convenient divisions of this chapter we propose to arrange the enactments which relate exclusively to game in Scotland, viz.:—

- SECT. 1. *What is "Game," and the Property in it*, p. 226.
- „ 2. *The Landed Qualification to kill Game*, p. 229.
- „ 3. *Landlord and Tenant's Rights to Game*, &c., p. 230.
- „ 4. *Of Gamekeepers and their Powers*, p. 233.
- „ 5. *The Seasons for Sporting*, p. 233.
- „ 6. *Of Muirburn and Destroying Game*, p. 239.
- „ 7. *Unlawful Possession of Game*, p. 240.
- „ 8. *Trespasses in Pursuit of Game, &c., in the Day-time*, p. 241.

- SECT. 9. *Procedure for Penalties and in Actions under 2 & 3 Will. 4, c. 68, p. 246.*
 „ 10. *Actions for Trespass at Common Law, p. 252.*
 „ 11. *Tabular List of Penalties, p. 254.*
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SECT. 1. WHAT IS “GAME” AND THE PROPERTY IN IT.

1. *What is “game” and the property in it:*

“Game” in Scotland.

The birds and animals which are game in Scotland are generally the same as in England; but, as pointed out in the Introduction (*ante*, pp. 3, 4), some of the Scotch game acts seem to call deer, snipes and quail game; and one of the acts, 25 & 26 Vict. c. 114 (Chap. XVI.), which extends to the United Kingdom, defines “game” for certain purposes to embrace rabbits, woodcocks and snipes. It should here be observed, however, that in Chaps. X. and XI., as to dealing in game by licensed and unlicensed dealers (but not the *killing* of it) it is shown that the English definition of “game” is imported into Scotland by 23 & 24 Vict. c. 90, s. 13 (*ante*, p. 135). Each act, therefore, as to such definition must be adhered to, for it will only apply to those birds, &c., expressly named.

Property in game, &c.

As to property in game, see observations *ante*, p. 35, as to the law of Scotland, by which as a general rule the captor of the game is deemed the proprietor of it, and, unless the seizure and forfeiture of it are sanctioned by statute, he cannot be deprived of it.¹ By the common law of Scotland, all men have right and privilege of the game on their own estates and property; the right to protect as well as to kill it, considered as a real right, being an incident of landed property remaining with him as a separate estate after he has let the lands for all the usual agricultural purposes. A proprietor may, and generally does, possess the game on his own land,

¹ Ersk. B. ii. t. 1, s. 10; Barclay's Dig. 405.

or he may possess it on the estate of another person by virtue of a servitude, his own estate being the dominant tenement. But it never appears disjoined from the ownership of land, as a separate tenement constituted by infestment or tack. It is often exercised by delegation; but in that case it is merely a personal privilege.² As between the landlord and tenant the presumption is where the lease is silent, that the landlord impliedly reserves the right to hunt and shoot on the lands. The tenant has not a concurrent right and may be interdicted from killing the game.³ But the tenant may, without the consent of his landlord, kill rabbits which are not game, for the preservation of his crops, where his lease is silent as to them; but the landlord can obtain an interdict if there are reasonable grounds for apprehending that under pretence of destroying rabbits the tenant is really engaged in killing game.⁴ The tenant has in general (except perhaps as to deer) the right to all other birds and animals than game strictly so called, including, it is presumed, quails, landrails, &c. except pigeons, which are protected by ancient statutes.⁵ Rabbits, by the old statutes, when inclosed in warrens, were considered as private property, and the penalties of theft were incurred by any one who took them from their warrens, or "cunningaries" without permission of the owner, while the destruction of them elsewhere was declared to be a point of dittay.⁶ The landlord is responsible for any surface damage which he causes to the tenant in exercise of his right to the game. Moreover, where the landlord is entitled

Rights as
between
landlord and
tenant.

Rabbits, &c.

Liability to
tenants for
surface
damage.

² Mor. 4,995; *Pollock v. Harvey*, 1828, 6 S. & D. 913; Irvine G. L. 25.

³ *Marquis of Tweeddale v. Somner*, 1808; *Earl of Hopetoun, v. Wight*, 1810, Fac. Coll.; *Wemyss v. Wilson*, 10 D. B. & M. 204; Irvine, G. L. 21, 22.

⁴ *Moncrieff v. Arnott*, 1828, 6 S. & D. 580; Irvine, G. L. 17.

⁵ *Paterson*, 168; Irvine, G. L. 17—19.

⁶ Irvine, G. L. 16.

exclusively to the game, if he preserve it in *excessive* quantity and thereby causes extraordinary injury to the tenant's crops, the tenant has a right of action against his landlord for such damage; but the tenant cannot abate the nuisance by driving the game off his farm by means of fire-arms, dogs muzzled or otherwise, although not actually seizing it, but must resort to his action at law.⁷ A person holding a right of servitude of pasture or otherwise over land cannot kill the game thereon, even though he may have the statutory qualification in land, such right not being on the same footing with a right of property.⁸ By the constant usage of Scotland a qualified person may grant permission to shoot over his own lunds to a person who is not so qualified, and a person so having permission from a qualified person may lawfully have in his possession the game which he has killed in virtue of such permission.⁹ A tenant, in the absence of a stipulation to the contrary, cannot prevent his landlord, or those having his permission, hunting over his farm; but he is entitled to compensation for damage actually done by either, and may prevent their injuring newly sown grain, or young grass.¹⁰ A person having a reserved right to hunt over another's ground may grant permission to others, but is not entitled to abuse it to the great prejudice of the owner, or to lease the game for rent.¹¹

Rights of servitude over land.

Tenant cannot prevent landlord hunting.

Leasing game.

The person who has the right of property in

⁷ *Wemyss v. Wilson*, 1847, 10 D. B. & M. 194; *Drysdale v. Jameson*, 1832, 2 S. & D. 147; *Irvine*, G. L. 61, 62.

⁸ *Forbes v. Anderson*, 1809, Fac. Coll.; *Earl of Aboyne v. Farquharson*, 1814, Fac. Coll.; *Marquis of Tweeddale v. Dalrymple*, 1778, M. 4,992; *Irvine*, G. L. 47, 48, 56.

⁹ *Kelly v. Smith*, 1780, Fac. Coll. App. No. 87, M. 4,995; *Irvine*, G. L. 42; *Barclay's Dig.* 406.

¹⁰ *Ronaldson v. Ballantine*, 1804, M. 15, 270; *Irvine*, G. L. 58, 59.

¹¹ *Earl of Aboyne v. Innes*, 1813, Fac. Coll.; *Carnegie v. Lord Kintore and Gammell*, 1829, 8 S. & D. 251; *Irvine*, G. L. 28.

lands may grant leases of the game upon it, a practice which has recently become very frequent in Scotland, being considered only as delegations from the proprietor of his privilege or franchise to kill game on the estate, which could otherwise be competently exercised by the landlord alone, and not as conferring on the tenant of the shootings any right to the fruits of the soil; but one of two co-proprietors is not entitled to grant to others a “lease for rent” of the game on the common property, though he may himself shoot, and give gratuitous permission to others to a reasonable extent; nor does the right to lease game belong to one who holds merely a right of servitude of pasturage over the servient property, not being himself entitled to shoot; but it would appear from the cases in note¹¹ that a lease of game cannot be assigned by the tenant or sublet, without an express power to do so.¹²

SECT. 2. THE LANDED QUALIFICATION TO KILL GAME.

The Act 1621, cap. 31, which provides the property qualification to kill game, is still in force,¹³ and applies to shooting as well as to hunting game, but apparently not to the snaring of hares, is as follows:—

Anent hunting and haulking.—“Our soveraigne lord, and estates of this present parliament, statutes and ordaines, that no man hunt nor haulk at any time hereafter, who hath not a plough of land¹⁴ in

¹² Irvine, G. L. 26—29; *Campbell v. Campbell*, 1809, Fac. Coll.

¹³ *Earl of Hopetoun v. Wight*, 1810, Fac. Coll.; *Trotter v. M'Ewan*, 1809, Fac. Coll. This qualification is assumed in 13 Geo. 3, c. 54, s. 3, post, p. 240. The qualified person may grant permission. (See *ante*, p. 228; Irvine G. L. 39, &c.)

¹⁴ The extent of the plough-gate of land, which must be in Scotland, is uncertain and has not been conclusively settled, but is variously estimated from 96 to 104 Scotch acres. (Irvine, G. L. 43, 44.)

Act 1621, c. 31. heritage, under the paine of ane hundredth pounds. Ordaines his Majestie to have the one halfe of the penaltie of the contraveeners of this present act; and the dilator to have the other halfe of the said penaltie."

Procedure for penalty.—The penalty, (8*l.* 6*s.* 8*d.*, English,) is recoverable before justices of the peace of the county where the offence was committed (*Buchanan v. Weir*, 1808, 19 *Fac. Coll.* 526; *Clephane v. Meek*, 1810), and must be prosecuted for within twenty years; which may be either at the instance of the fiscal, or with his concurrence by a private party. It is also said that the penalty may be sued for in the Sheriff's Small Debt Court, under the schedule for statutory penalty. (Barclay's *Dig.* 411, 412; Irvine, *G. L.* 53.)

Sect. 3. LANDLORD AND TENANT'S RIGHTS TO GAME, &c.

3. Landlord and tenant's rights to game, &c.

Excise licence to be taken out in all cases.

Killing hares.

11 & 12 Vict. c. 30.

As in England, so in Scotland, neither the landlord, or the tenant, or occupier of lands, who is entitled to the game, can use a dog, gun, &c., to take game or conies, &c. (with some few exceptions), without first obtaining an excise licence to kill game under the 23 & 24 Vict. c. 90, ss. 2, 5 (*ante*, pp. 60, 64).

There are no enactments, as in England (Chap. VI., *ante*, p. 80), defining the landlord and tenant's rights to the game, which is founded upon the common law only, as mentioned in sect. 1, *ante*, p. 226; but there is a corresponding act to the English Act, 11 & 12 Vict. c. 29, *ante*, pp. 88—91, as to killing hares by owners and occupiers, viz., the 11 & 12 Vict. c. 30, and which exempts them from the government duty on the licence to kill game.

The 11 & 12 Vict. c. 30,¹⁵ after reciting that by

¹⁵ Intituled "An Act to enable all Persons having at present a Right to kill Hares in Scotland to do so themselves, or by Persons authorized by them, without being required to take out a Game Certificate." (Passed 22nd July, 1848.)

48 Geo. 3, c. 55, 52 Geo. 3, c. 93, and 3 & 4 Vict. 11 & 12 Vict.
c. 17 [now repealed], “certain duties of assessed
taxes were granted to her Majesty the Queen upon,
amongst other things, every person who shall use
any dog, gun, net, or other engine for the purpose of
killing any game whatever, or shall assist in any man-
ner in the taking or killing of any game:” and that
“by divers laws now in force, penalties are imposed
on all persons taking or killing, or assisting in the
taking or killing of, amongst other things, any game
whatever, who shall not have obtained a certificate
of the due payment of such duties;” and that “it Sect. 1.
has been found that much damage has been and
continually is done by hares to the produce of land,
and that great losses have been thereby sustained;
and it is expedient that all persons having at pre-
sent a right to kill and destroy hares in Scotland
should be allowed to do so without the payment of
the said duties of assessed taxes, and without the
incurring of any of the penalties above mentioned;”
by sect. 1 enacts,—“That from and after the pass-
ing of this act it shall be lawful for any person
having at present a right to kill hares in Scotland
to do so himself, or by any person permitted, di-
rected or commanded by him by any writing under
his hand, without the payment of any such duties
of assessed taxes as aforesaid and without obtaining
an annual game certificate, [now an excise “licence
to kill game,” 23 & 24 Vict. c. 90, s. 6, *ante*, p.
67].¹⁶

Provided always, that such hares shall be found
and killed in or upon his own land;—provided also,

Any person
having a
right to kill
hares in Scot-
land may do
so without a
game certifi-
cate, pro-
vided they
shall be
found on his
own land.

¹⁶ The persons giving the permission must be those who are qualified by the possession of a plough-gate of land required by the act 1621, c. 31, *ante*, p. 229 (Irvine, G. L. 15). The land need not be “inclosed” as in England (see *ante*, p. 88); and here authority is given to kill hares to “any person” having the right to kill them; therefore re-
serving existing rights between landlords and tenants, and not giving it to each. The form used, none being given in this act, may be that in use in England, No. 17, *ante*, p. 95.

11 & 12 Vict. c. 30. that no person permitted, directed or commanded as aforesaid shall have power to authorize any other person whatever to take or destroy any hare."

Not liable to tax as game-keepers. Sect 2 enacts,—“That no person so permitted, directed or commanded to kill hares as aforesaid shall, unless otherwise chargeable, be liable to any duties of assessed taxes as gamekeeper.”

To extend to coursing or hunting. Sect. 3 enacts,—“That from and after the passing of this Act it shall be lawful for any person to pursue and kill or to join in the pursuit and killing hares by coursing with greyhounds, or by hunting with beagles or other hounds, without the having obtained an annual certificate” [now an excise “licence to kill game,” 23 & 24 Vict. c. 90, s. 6, *ante*, p. 67].¹⁷

Not to permit the destruction of hares, &c. by poison. Sect. 4 enacts,—“That nothing herein contained shall extend or be taken or construed to extend to the making it lawful for any person, with intent to destroy or injure any hares *or other game*, to put or cause to be put any poison or poisonous ingredient *on* any ground, whether open or inclosed, where game usually resort, *or* in any highway,—*or* for any person to use any firearms or gun of any description, *by night*, for the purpose of killing any game or hares.”¹⁸

Interpretation of act. Sect. 5 enacts,—“That in the interpretation of this act the singular number shall extend to several persons and things as well as to one person or thing;—and any word importing the plural number shall apply to one person or thing as well as to several persons or things;—and every word importing the masculine gender only shall extend to a female as well as a male;—and the word ‘night’ shall be considered and is hereby declared to commence at the expiration of the first hour after sunset, and to conclude at the beginning of the last hour before sunrise.”

¹⁷ See 11 & 12 Vict. c. 29, s. 4, a similar enactment, *ante*, p. 90, and note thereto.

¹⁸ See 11 & 12 Vict. c. 29, s. 5, *ante*, p. 91, and notes thereon.

Sect. 4. OF GAMEKEEPERS AND THEIR POWERS.

Respecting gamekeepers there are no statutory enactments, except in the Day and Night Poaching and Revenue Acts, as to the appointment of gamekeepers, registering their deputations or their authority, as manors are not recognized there (see *ante*, p. 35); but the stamp office insist on such registration (note ²⁵, *ante*, p. 11), and licences are necessary for gamekeepers, and at the same cost, as in England (see *ante*, p. 52, note ⁴). Gamekeepers are named in the following statutes :

9 Geo. 4, c. 69, s. 2, *ante*, p. 170, and 7 & 8 Vict. c. 29, s. 1, *ante*, p. 173, authorizing apprehension of night poachers ;

23 & 24 Vict. c. 90, *ante*, p. 61, &c., the grant of licences to gamekeepers, and their authority under them ;

23 & 24 Vict. c. 90, s. 10, *ante*, p. 72, their authority to demand to see the licences of persons sporting on the lands, and to give their names, &c. ;

2 & 3 Will. 4, c. 68, s. 2, *post*, p. 243, authority to require trespassers to quit the land ; and s. 5, *post*, p. 245, to seize game from trespassers.

Sect. 5. THE SEASONS OF SPORTING.

The first act relating to the close time is the Act 5. *The sea-
sons of sport-*
1707, cap. 13, which has been altered as respects
muir fowl and partridges by the 13 Geo. 3, c. 54,
and recently by the Revenue Act, 23 & 24 Vict. c.
90, s. 13 (*ante*, p. 135, note ⁸), which has legalized
the dealing in game in Scotland, and imported into
that country the English close season as to the
birds in 1 & 2 Will. 4, c. 32, so far as the dealing
in them is concerned, leaving the *taking* and *killing*
them subject to the enactments in force in Scot-
land. The Day and Night Poaching Acts ap-
pear also to have substantially repealed the enact-

Act 1707, c. 13. **Times when muir fowls and partridges not to be killed.** **Common fowler not to hunt on grounds without warrant from proprietors; or set nets, &c.** **Shooting hares.** **ment as to shooting on lands without the proprietor's warrant.** The Act 1707, cap. 13, is as follows:— “Our Sovereign Lady, with advice and consent of parliament, does hereby strictly prohibite and discharge in all time coming the killing of *muir fowls* from the first of March to the twenty of June, and *partridges* from the first of March to the twenty of August inclusive, under the penalty of twenty pounds Scots, *toties quoties*,¹⁹ the half whereof to be given to the discoverer, and the other half to be at the disposal of the judge before whom the same shall be cognosced. And for the better preventing the killing of these fowls during the foresaid prohibited seasons, her Majesty, with advice foresaid, does strictly prohibite and discharge the selling, buying or using of these fowls during the foresaid seasons, within any burgh, village or private house within this kingdom, under the penalty foresaid, to be applyed as above. As also, it is hereby discharged, that no common fowlers shall presume to hunt on any grounds without a subscribed warrant from the proprietors of the said grounds, under the penalty foresaid, besides forfeiting their dogs, guns and nets to the apprehenders or discoverers. And it is hereby further provided, that no fowler, or any other person whatsoever, shall come within any heretor's ground, without leave ask'd, and given by the heretor, with setting dogs and nets, for killing fowls by nets;—and if any common fowler shall be found in any place with guns or nets, having no licence from any nobleman or heretor, they shall be sent abroad as recruits, as also, that no person whatsoever shall shoot hares under the foresaid penalty. [The prosecution must be at the instance or

¹⁹ £20 Scots is 1L 18s. 4d. English. The 13 Geo. 3, c. 54, s. 1, alters these times and must be considered as the only act in force as to the taking of these birds, but as to dealing in them, the English season must be adhered to. The enactments are very inconsistent (Irvine, G. L. 64); but probably the more recent acts will apply. See Sect. 8 as to trespass.

with the concurrence of the fiscal, before justices ^{Act 1707, c.}
or sheriffs, &c., Irvine's G. L. 65, Barclay's Dig. ^{13.}
^{413.]}

And for the better executing of this law, her Sheriffs to
Majesty, with advice foresaid, appoints and ordains ^{put act in}
all sheriffs of shires, stewarts of stewartries, justices ^{force under}
of the peace, masters of the game, bailies of burghs
or regalities, to put the same in due execution, under
the penalty of one hundred pounds Scots ; for which ^{[English}
penalty, it is hereby declared, that the said judges ^{£8: 6s. 8d.]}
shall be liable to the pursuer or complainer before
the lords of session, upon an instrument taken by
the said pursuer or complainer, that the judge ap-
plied to refused or delayed to cognosce the com-
plaint according to law, and to discern in the terms
of this act ; and lastly, her Majesty, with consent
foresaid, does hereby ratifie and approve all former
acts made anent the game, except in so far as they
are hereby innovat and altered by this present act.”

At p. 9 is a tabular statement of the periods when ^{13 Geo. 3, c.}
certain birds of game are prohibited from being ^{54.}
taken. 13 Geo. 3, c. 54, s. 1, enacts,—“That every ^{Taking, sell-}
person who shall wilfully take, kill, destroy, carry, ^{muir fowl,}
sell, buy, or have in his or her possession, or use, ^{heath fowl,}
any muir fowl or tarmargan, between the tenth day ^{partridge or}
of December and the twelfth day of August in any ^{pheasant,}
year ;—or any heath fowl, between the tenth day ^{between}
of December and the twentieth day of August in any ^{certain days ;}
year ;—or any partridge, between the first day of
February and the first day of September in any
year ;—or any pheasant, between the first day of
February and the first day of October in any

²⁰ Intituled “An Act for the more effectual preservation of the Game in that part of great Britain called Scotland ; and for repealing and amending several of the laws now in being relative thereto.” The act came into operation on the 25th June, 1773 (s. 15); s. 16 repealed 24 Geo. 2; 3 Geo. 3, and part of 6 Geo. 3, as to game and muirburn. The act does not define “game,” though in sect. 3, *post*, p. 241, snipes and quails seem to be called game.

^{13 Geo. 3, c.} ^{54.} ^{year ;}²¹—shall, for every bird so taken, killed, destroyed, carried, sold, bought, found, or used, forfeit and pay the sum of five pounds sterling ;²²—and, in case of not paying the sum decreed within the space of ten days after conviction by a final sentence, shall suffer imprisonment for two months for each five pounds sterling thereof.”

Not to extend to pheasants and partridges in breeding places.

Sect. 2.

Procedure for penalties.

Offences may be inquired into and determined by the justices, &c.

Sect. 2 enacts,—“That nothing in this act shall extend to any pheasant or partridge which shall be taken in the seasons allowed by this act, and kept in any mew or breeding place.”²³

The procedure for penalties under 13 Geo. 3, c. 54, is directed by the following sections of it:—

Sect. 8 enacts,—“That all offences against this act shall and may be inquired into and determined, either by the oath or oaths of one or more credible witness or witnesses, or by the confession or oaths of the parties accused, before any two or more of his Majesty’s justices of the peace, or before the sheriff or stewart-depute, or substitute, of the county where the offence shall be committed, or where the offender shall be found;—and that all prosecutions for offences against this act shall be carried on, either at the instance of the fiscal of the court in which the prosecution is brought, or of any other person who will inform or complain.” [The proceedings may be in the form of an ordinary civil action, and judgment and conviction given in the absence of the accused. *Barclay’s Dig.* 416; *Irvine, G. L.* 80.]

²¹ As to the time, it is computed as in England, see *ante*, p. 47, note ⁴, under 1 & 2 Will. 4, c. 32, s. 3.

²² The killing of muir fowl and partridges as provided in act 1707, c. 13, should be taken under this act; but the season for dealing in them and others would now be under the English act (see *ante*, p. 135, note ⁸.) See also *Simpson v. Unwin*, *ante*, p. 138, as to when the possession of the game is illegal. The penalty in England is only 1*l.* per head (*ante*, pp. 47, 48). The penalty here provided cannot be modified or mitigated, and the terms of imprisonment are cumulative. (*Irvine, G. L.* 75, citing *Whatman v. Ogilvie*, 1854, 1 *Irvine*, 483, *High Court*.)

²³ Apparently other birds than pheasants and partridges cannot be kept in a mew or breeding place during the close season.

Sect. 9 enacts,—“That if any person convicted of any of the offences against this act shall not pay the penalty or forfeiture decreed against him or her, within the space of ten days from and after a final judgment of conviction, it shall and may be lawful for the justices of the peace, sheriff or stewart-depute, or substitute, before whom the information, complaint, or action may have been brought, upon the application of the prosecutor, to grant warrant for levying the penalties or forfeitures, by immediate distress and sale of the offender's goods and moveables, together with the costs and charges attending the levying thereof, returning the overplus, if any be, to the owner;—or to grant warrant for committing the offender to the common gaol of the county, for the time specified in this act, as satisfaction for the penalty or forfeiture incurred, or until payment:—And in case a warrant for levying the penalty by distress and sale of the offender's goods and moveables shall be first applied for and obtained, and that the penalty or forfeiture shall not be recovered in consequence thereof, it shall and may be lawful for the justices of the peace, sheriff or stewart-depute, or substitute, who granted the warrant for levying the penalty or forfeiture by distress and sale of the offender's goods and moveables, upon its being certified to him or them by the officer employed in executing the warrant, either that he has been able to recover no part of the penalty or forfeiture, or that a certain part, to be certified by him, still remains unrecovered, to grant warrant for committing the offender to the common gaol of the county for the time specified in this act, as satisfaction for the penalty or forfeiture incurred, or until complete payment shall be made of the penalty or forfeiture incurred and decreed.”

Sect. 10 enacts,—“That one moiety of the penalties or forfeitures to be incurred for any offence against this act shall, when recovered, be paid to the prosecutor, and the other moiety shall be applied to the use of the poor of the parish, or to the repairing of the high roads within the parish where the offence shall be committed, as the justices of the peace or the sheriff, or stewart-depute or substitute, shall direct, before whom the offender shall be convicted.”

Sect. 11 enacts,—“That it shall and may be lawful to or for any person conceiving himself or herself aggrieved by any decree of the justices of the peace or sheriff, or stewart-depute or substitute, in such prosecutions, to complain and seek relief by appeal to the next Circuit Court of Justiciary of the circuit wherein the county is where the

13 Geo. 3, c.
54.

Persons con-
victed to pay
the penalties
within ten
days, or the
same may be
levied by dis-
tress.

In case the
penalty can-
not be recov-
ered by dis-
tress, offend-
ers to be com-
mitted.

Penalties and
forfeitures
how to be
applied.

Persons
thinking
themselves
aggrieved,
may appeal
to the next
court of
justiciary;

13 Geo. 3, c. 54. decree is pronounced;—or where there are no circuit courts, to the Court of Justiciary at Edinburgh,—by taking and entering an appeal in open court at the time of pronouncing such decree, or at any time thereafter within ten days, by lodging the same in the hands of the clerk of the court, and serving the adverse party with a duplicate thereof personally, or at his dwelling-house, or his procurator or agent in the cause;—and such service shall be sufficient summons to oblige the prosecutor to attend and answer at the next circuit court which shall happen to be held, at least fifteen days after service, or at the first Court of Justiciary which shall be held at Edinburgh, in the case where there are no circuit courts, at least fifteen days after such service;—and thereupon the judge or judges at such circuit court, or in the Court of Justiciary at Edinburgh, shall and may proceed to cognosce, hear, and determine:—And in case they shall find the reasons of any such appeal not relevant or not instructed, or shall determine against the party appealing, the judge or judges shall condemn the appellant in such costs of suit as shall appear to be just and reasonable, and the decree so pronounced shall be final and conclusive to the parties.” [It has been decided under this provision, that the prosecutor as well as the defendant may appeal to the Court of Justiciary (*Gray v. Bonnar*, 1816, Fac. Coll. App. No. 1; Irvine, G. L. 85, 86). The 20 & 21 Vict. c. 43, *ante*, p. 154, as to justices stating a case for a superior court does not apply to Scotland (s. 15).]

Persons appealing to lodge a bond with the clerk of court, for paying the sums appealed against, and for costs, &c. Sect. 12 enacts,—“That when an appeal is taken, the appellant, at the time of entering his or her appeal, shall lodge with the clerk of the court from which the appeal is taken a bond, with a sufficient cautioner, for paying the sum or sums contained in the decree appealed against, so far as affirmed and approved of by the judgment upon the appeal, and for paying the costs of suit, if any shall be awarded;—and the clerk of court shall be answerable for the sufficiency of such cautioner.”

In case of any difficulty before the circuit court, &c., the proceedings thereupon may be laid before the justiciary court at Edinburgh, Sect. 13 enacts,—“That in case any circuit court shall, on hearing any such appeal, find any such difficulty to arise, that by means thereof such circuit court cannot proceed to the determination of the same, consistently with justice and the nature of the case;—in any such case, and not otherwise, it shall and may be lawful to and for such circuit court to certify such appeal, together with the reasons of such difficulty and the proceeding thereupon had before such circuit court, to the Court of Justiciary at Edinburgh,

which is hereby authorized and required to proceed in and determine the same.”

Sect. 14 enacts,—“That no penalty or forfeiture in this act shall be recovered, unless the prosecution for recovering thereof shall be commenced within six months after the offence committed.”

13 Geo. 3, c.

54.

and be there

finally deter-

mined.

Limitation of

actions.

SECT. 6. OF MUIRBURN AND DESTROYING GAME.

The 13 Geo. 3, c. 54 (mentioned *ante*, p. 235, note ²⁰), s. 4, enacts,—“That every person who shall make muirburn, or set fire to any heath or muir, in that part of Great Britain called Scotland, from the eleventh day of April to the first day of November in any year, shall forfeit and pay the sum of forty shillings sterling for the first offence, five pounds sterling for the second offence, and ten pounds sterling for the third and every other subsequent offence;—and, in case of not paying the sum decreed within the space of ten days after conviction by a final judgment, shall suffer imprisonment for six weeks for the first of offence, two months for the second, and three months for the third and every other subsequent offence.”²⁴

For the “Procedure for Penalties,” see *ante*, pp. 236—238. There are supplemental provisions in regard to the offences, which are as follow:—

Sect. 5 enacts,—“That the tenant, possessor or occupier of the ground upon which such muirburn shall be made or discovered within the forbidden time aforesaid, shall be deemed and taken to be guilty of the offence, and shall be liable to the several penalties aforesaid, unless such tenant, possessor or occupier shall prove, to the satisfaction of the

6. Of muir-
burn and de-
stroying
game:Penalties for
first and sub-
sequent of-
fences on
persons
making
muirburn
from April 11
to Nov. 1.

Sect. 4.

Supplemental
provisions:If any muir-
burn be dis-
covered with-
in the time
forbidden,
occupiers of
the ground
to be liable,
unless they
shall prove
the contrary.

Sect. 5.

²⁴ As to the offence, it has been held by the Court of Justiciary, in reference to the term “muirburn,” that it is not necessary, in order to constitute the statutory offence, that heather should be proved to have been burned; that the word “muir” must be held as descriptive of the ground, and not of its peculiar vegetable products; and that setting fire to anything growing on muir land, whether grass, whins, bent or broom, constituted a contravention of the statute. (*Rodger v. Gibson*, 1842, 1 Brown, 78; *Irvine G. L.* 93.)

13 Geo. 3, c. 54. court before which he or she shall be prosecuted, that such fire was communicated from some neighbouring ground, or was raised upon his or her ground by some other person not in his or her service or family."

Proprietors of wet lands in their own occupation may burn heath between the 11th and 25th April.

Sect. 6.
Or may authorize their tenants so to do.

Writings authorizing tenants to burn heath, as aforesaid, to be recorded in the sheriff court books.

Sect. 7.

Destroying game.

Sect. 6 enacts,—“That every proprietor of high and wet muir lands, the heath upon which frequently cannot be burnt so early as the eleventh day of April, may, when such lands are in his own occupation, burn the heath upon the same at any time between the eleventh and twenty-fifth day of April in any year, without incurring any of the penalties before mentioned;—and when such lands are let, the proprietor or his commissioner or factor may, by a writing under his or their hands, authorize his tenant or tenants in such lands to burn the heath thereon, at any time between the eleventh and twenty-fifth day of April, in any year, without incurring any of the penalties before mentioned.”

Sect. 7 enacts,—“That the writing authorizing such burning when the lands are in the occupation of a tenant, shall, previous to such burning, be recorded in the sheriff or steward court books of the county or stewartry within which the lands are, and which the sheriff or steward clerk of such county or stewartry is hereby ordered and directed to do, upon receiving payment of the fees usually paid for recording writings.”

As to destroying game, the only specific offence of that character is in the 13 Geo. 3, c. 54, s. 1, *ante*, p. 235; and “The Poisoned Grain Prohibition Act, 1863,” 26 & 27 Vict. c. 113, also applies to Scotland. See its provisions, *ante*, pp. 124—127.

7. Unlawful possession of game:
13 Geo. 3, c. 54.

Persons not qualified to kill game, having game in his cus-

Sect. 7. UNLAWFUL POSSESSION OF GAME.

By sect. 3, of the 13 Geo. 3, c. 54, before mentioned (*ante*, p. 235, note ²⁰), it is enacted:—

“That every person whatsoever not qualified to kill game in Scotland,²¹ who shall have in his or her custody, or carry, at any time of the year, upon

²⁰ The qualification is the ploughgate of land before mentioned, *ante*, p. 229.

any pretence whatsoever, any hares, partridges, pheasants, muir fowl, tarmargans, heath fowl, snipes or quails, without the leave or order of a person qualified to kill game in Scotland, for carrying such hares or o'her g'me, or for having the same in his or her custody, shall, for the first offence, forfeit and pay the sum of twenty shillings sterling; and for the second, and every other subsequent offence, the sum of forty shillings sterling; and in case of not paying the sum decreed within the space of ten days after conviction by a final judgment, shall suffer imprisonment for six weeks for the first offence, and for three months for the second and every other subsequent offence.”²⁶

For the procedure for the recovery of these penalties, see *ante*, pp. 236—238.

The Poaching Prevention Act, 25 & 26 Vict. c. 114, *ante*, p. 200, Chap. XVI., provides another mode of punishing for the unlawful possession of game.

Sect. 8. TRESPASSES IN PURSUIT OF GAME, &c., IN THE DAY-TIME.

*8. Trespasses
in pursuit of
game, &c.*

The 2 & 3 Will. 4, s. 68, regulates the punishment of trespassing during the day, and is the corresponding act to the English Act, 1 & 2 Will. 4, c. 32, *ante*, p. 97, Chap. VII.

The 2 & 3 Will. 4, c. 68,²⁷ after reciting that

²⁶ Under this act of 13 Geo. 3, c. 54, there is no forfeiture of the game which may be found, nor any power to seize it, like in the 25 & 26 Vict. c. 114, Chap. XVI., and the defendant is entitled to it (*Scott v. Everitt*, 1853, 15 D. B. & M. 288; Irvine, G. L. 76—79). This enactment is now substantially repealed by 23 & 24 Vict. c. 90, s. 13, as regards the season for having some of these birds (*ante*, p. 135 and note *; but it is in force as regards hares, snipes and quails, which have no close season in England).

²⁷ Intituled “An Act for the more effectual Prevention of Trespasses upon Property by Persons in pursuit of Game in that Part of Great Britain called Scotland.” (Passed 17th July, 1832.)

^{2 & 3 Will. 4, c. 68.} “trespasses upon property by persons unlawfully engaged in the pursuit of game have recently become frequent in various parts of Scotland, and have, in many cases, been attended by acts of violence and intimidation, for the repression of which the laws now in force in that part of the United Kingdom provide no sufficient remedy, and that it is therefore expedient that more effectual and summary remedies should be provided ;” by sect. 1, enacts,—“ That if any person whatsoever shall commit any trespass by entering or being, in the day-time,²⁸ upon any land *without leave of the proprietor*, in search or pursuit of game, or of *deer, roe, woodcocks, snipes, quails, landrails, wild ducks, or conies*,²⁹ such person shall, on being summarily

Penalty on
persons tres-
passing in
the day-time
upon lands
in search of
game.

Sect. 1.

Sect. 3.

²⁸ Sect. 3 enacts, “That for the purposes of this act the daytime shall be deemed to commence at the beginning of the last hour before sunrise, and to conclude at the expiration of the first hour after sunset.”

²⁹ “Game” is not defined, but the definition in the previous act of 9 Geo. 4, c. 69, s. 13, *ante*, p. 167, must be adopted. *Deer, roe and wild ducks* are not in the English Day Poaching Act, 1 & 2 Will. 4, c. 32, s. 30, *ante*, p. 98, which see and the cases thereunder. It appears that the words “*without leave of the proprietor*” have reference to the being or entering on the lands, and it has accordingly been decided by a full bench of the Judges of the Court of Justiciary, but by the narrowest majority, that a tenant who, in virtue of his lease, was legally upon the ground, could not be considered a trespasser in the sense of this statute (*Smellie v. Lockhart*, 1844, 2 Brown’s Rep. 194; confirmed by *Earl of Kinnoul v. Todd*, 1859, 32 Sc. Jur. 154; 3 Irvine, 501); but it appears that, under the Night Poaching Act, the tenant has been held liable to conviction. See the case *ante*, p. 168, note 4. The conviction of a servant under this Day Act for trespassing on the farm has been sustained. (*Earl of Selkirk v. Kennedy*, 1850, Shaw’s Rep. 463; *Raper v. Duff*, 32 Sc. Jur. 478; 3 Irvine, 529. See Irvine G. L. 97.) By the English act, 1 & 2 Will. 4, c. 32, s. 12, *ante*, pp. 83, 84, the tenant is liable to a penalty for killing the game if he is not entitled to it, of which there is no corresponding provision in this act. The entry upon the land must be a personal entry to constitute a trespass under this section, as decided under the English act, note 4, *ante*, p. 99.

convicted thereof before a justice of the peace, on ^{2 & 3 Will. 4,}
c. 68.
 proof on oath by one or more credible witness or
 witnesses, or confession of the offence, or upon
 other legal evidence, forfeit and pay such sum of
 money, not exceeding two pounds, as to the justice
 shall seem meet, together with the costs of the con-
 viction ; ³⁰

“ And that if any person having his face blackened, coloured, or otherwise disfigured for the purpose of ^{Penalty on persons disguised, or to the number of five or more trespassing.}
 disguise,—or if any persons to the number of five or more together shall commit any trespass by entering or being, in the day-time, upon any land in search or pursuit of game, or of deer, roe, wood-cocks, snipes, quails, landrails, wild ducks, or conies, ^{Sect. 1.}
 —each of such persons shall, on being summarily convicted thereof before a justice of the peace on proof on oath by one or more credible witness or witnesses, or confession of the offence, or upon other legal evidence, forfeit and pay such sum of money, not exceeding five pounds, as to the said justice shall seem meet, together with the expenses of process : ³⁰

“ Provided always, that any person charged with ^{Proviso.}
 any such trespass shall be at liberty to prove, by way of defence, any matter which would have been a defence to an action at law for such trespass.”

Sect. 2 enacts,—“ That where any person shall be trespassing on any land, in the day-time, in search or pursuit of game, or woodcocks, snipes, quails, landrails, wild ducks, or conies, it shall be lawful for any person having the right of killing the game upon such land,—or for the occupier of the land,—or for any gamekeeper or servant of either of them,—or for any person authorized by either of them,—to require the person so trespassing forthwith to quit the land whereon he shall be so ^{Such trespassers may be required to quit the land, and to give their names and abodes; and in case of refusal may be arrested.}
Sect. 2.

³⁰ *Vide Sect. 9, post*, p. 246, for procedure for recovery of these penalties. A conviction under this section 5 entails a forfeiture of the licence. See 23 & 24 Vict. c. 90, s. 11, *ante*, p. 71.

2 & 3 WILL. 4, trespassing, and also to tell his christian name, surname, and place of abode ; ³¹ c. 68.

“ And in case such person shall, after being so required, offend by refusing to tell his real name or place of abode,—or by giving such a general description of his place of abode as shall be illusory for the purpose of discovery,—or by wilfully continuing or returning upon the land,—it shall be lawful for the party so requiring as aforesaid, and also for any person acting by his order and in his aid, to apprehend such offender, and to convey him, or cause him to be conveyed, as soon as conveniently may be, before a justice of the peace ;

Penalty.

“ And such offender (whether so apprehended or not), upon being summarily convicted of any such offence before a justice of the peace, at the instance of the owner or occupier of such land, or of the procurator fiscal for the county, on proof on oath by one or more credible witness or witnesses, or confession of the offence, or upon other legal evidence, shall forfeit and pay such sum of money, not exceeding five pounds, as to the convicting justice shall seem meet, together with expenses of process : ³²

Party arrested must be discharged, unless brought before a justice within twelve hours.

“ Provided always, that no person so apprehended shall on any pretence whatsoever be detained for a longer period than twelve hours from the time of his apprehension until he shall be brought before some justice of the peace ;—and that if he cannot, on account of the absence or distance of the residence of any such justice of the peace, or

³¹ See notes ⁸ and ⁹ to corresponding section of 1 & 2 Will. 4, c. 32, s. 31, *ante*, pp. 102, 103. *Deer and roe*, mentioned in the first section, are here omitted.

³² Of course, the party cannot be arrested if he give his name, &c. This section provides distinct offences from those in the first ; and when an offender is taken under it, he must be dealt with only under it, a written complaint not being necessary (*Mackenzie v. Maberley*, 32 Sc. Jur. 5 ; *Evans v. McLoughlan*, 33 Sc. Jur. 298 ; & C. in note ¹¹, *ante*, p. 103 ; *Paterson*, 171). For the mode of recovery of the penalty, *vide* Sect. 9, *post*, p. 246.

owing to any other reasonable cause, be brought ^{2 & 3 Will. 4,}
 before a justice of the peace within such twelve hours as aforesaid, then the person so apprehended shall be discharged at the end of that time, but may nevertheless be proceeded against for his offence by summons or warrant, according to the provisions hereinafter mentioned, as if no such apprehension had taken place" [post, p. 246].

Sect. 4 enacts,—“That the aforesaid provisions against trespassers shall not extend to any person hunting or coursing upon any lands with hounds or greyhounds, and being in fresh pursuit of any deer, hare, or fox already started upon any other land on which such person was entitled to hunt or course.”³³

Sect. 5 enacts,—“That where any person shall be found trespassing by day upon any land in search or pursuit of game, and shall then and there have in his possession any game, it shall be lawful for any person having the right of killing the game upon such land,—or for the occupier of such land,—or for any gamekeeper or servant of either of them,—or for any other person authorized by either of them,—or for any person acting by the order and in aid of any of the said several persons,—to demand from such trespasser such game in his possession, and in case such trespasser shall not immediately deliver up such game, to seize and take the same from him, for the use of the person entitled to the game upon such land.”³⁴

Sect. 6 enacts,—“That if any person being in the commission of a trespass shall assault or obstruct

³³ The punishment, therefore, for this trespass is left to the common law, for which see Sect. 10, p. 252. The corresponding section in the English act is the 1 & 2 Will. 4, c. 32, s. 35, *ante*, p. 105.

³⁴ Although this section does not, like the corresponding section of the English act, s. 36, *ante*, pp. 105, 106, apply to the “night,” it does not contain the restriction in that section as to the game being “recently killed,” and indeed all game in the offender’s possession may be seized.

2 & 3 Will. 4, c. 68. any person acting in the execution or in virtue of the powers and provisions of this act, such person, on being convicted thereof before two justices of the peace, on proof on oath by one or more credible witness or witnesses, or confession of the offence, or upon other legal evidence, shall forfeit and pay any sum not exceeding five pounds, over and above any penalty which he may have incurred by contravening this act,—and in default of payment thereof at such time as to the said justices may seem fit, shall be imprisoned in the common gaol or House of Correction (with or without hard labour) for a period not exceeding three months.”³⁵

Sect. 6.

9. Proceedings for penalties and in actions:

—*Penalties.*

Time of prosecutions for offences.

Summons.

Sect. 11.

Hearing *ex parte.*

SECT. 9. PROCEDURE FOR PENALTIES AND IN ACTIONS UNDER 2 & 3 WILL. 4, C. 68.

The following are the provisions of the 2 & 3 Will. 4, c. 68, as to the recovery of penalties, placed in the order of occurrence:—

Sect. 11 enacts,—“That the prosecution for every offence punishable by virtue of this act shall be commenced within three calendar months after the commission of the offence;—and that where any person shall be charged, on the oath of a credible witness, with any such offence before a justice of the peace, the justice may summon the party charged to appear before himself, or any one or two justices of the peace, as the case may require, at any time and place to be named in such summons;—and if such party shall not appear accordingly, then (upon proof of the due service of the summons, by delivering a copy thereof to the party, or by delivering such copy at the party’s usual place of abode to some inmate thereat, and explaining the purport thereof to such inmate,) the justice or justices may either proceed to hear and

³⁵ *Vide Sect. 9, infra,* for the recovery of this penalty.

determine the case in the absence of the party, or ^{2 & 3 Will. 4.}
^{c. 68.} may issue his or their warrant for apprehending and bringing such party before him or them, as the case may be; or the justice before whom the charge shall be made may, if he shall have reason to suspect, from information upon oath, that the party is likely to abscond, issue such warrant in the first instance, without any previous summons.”³⁶

Sect. 10 enacts,—“That it shall be lawful for any justice of the peace to issue his summons requiring any person to appear before himself, or any one or two justices of the peace, as the case may require, for the purpose of giving evidence touching any offence against this act;— and if any person so summoned shall neglect or refuse to appear at the time and place appointed by such summons, and no reasonable excuse for his absence shall be proved before the justice or justices then present, or if any person appearing in obedience to such summons shall refuse to be examined on oath touching any such offence by the justice or justices then and there present, every person so offending shall, on conviction thereof before the said justice or justices, or any other justice or justices of the peace, forfeit and pay such

Power to summon witnesses.
 Penalty for disobedience of summons,
 &c.

³⁶ The prosecution may be instituted either by the procurator fiscal or by the owner of the land trespassed upon (*Russell v. Colquhoun*, 1845, 2 Brown, 573; *Hume v. Meek*, 1846, 1 Ark. 88; *Raper v. Duff*, 32 Sc. Jur. 478; and in the county where the offence was committed (*Buchanan v. Weir*, 1818); but where the offender is to be cited in another county, letters of supplement from the Court of Justiciary must be obtained (Barclay's Dig. 433). The warrant to arrest can only be issued in the first instance, where the party is likely to abscond (*Smith v. Forbes*, 1848, 1 Ark. 508); of which there must have been a previous oath before the same justice upon a complaint, both of which being in writing, as well as evidence in support of the charge (*Ib. v. Simpson v. Crawford*, 1851, Shaw, 523; *Blythe v. Taylor*, 1853, 1 Irvine, 235; *Russell v. Lang*, 1844, 2 Brown, 211, 586; *Mackenzie v. Maberley*, 32 Sc. Jur. 5). The sheriff has no jurisdiction except quâ justice of the peace, as under the Night Poaching Act, *ante*, p. 179 (Barclay's Dig. 434).

2 & 3 Will. 4., sum of money, not exceeding five pounds, as c. 68. to the convicting justice or justices shall seem meet.”³⁷

Prosecutor not required to prove a negative.

Sect. 12.

Justices to fix the time for payment of penalties.

Imprisonment for non-payment.

Sect. 8.

Form of conviction.

Sect. 9.

Sect. 12 enacts,—“That it shall not be necessary in any proceeding against any person under this act to negative by evidence any licence, consent, authority, or other matter of exception or defence; —but that the party seeking to avail himself of any such licence, consent, authority, or other matter of exception or defence, shall be bound to prove the same.”³⁸

Sect. 8 enacts,—“That the justice or justices of the peace by whom any person shall be summarily convicted and adjudged to pay any sum of money for any offence against this act, together with expenses, may adjudge that such person shall pay the same, either immediately, or within such period as the said justice or justices shall think fit;—and that in default of payment at the time appointed, such person shall be imprisoned in the common gaol or house of correction (with or without hard labour), as to the justice or justices shall seem meet, for any term not exceeding two calendar months, the imprisonment to cease upon payment of the amount and costs.”³⁹

Sect. 9 enacts,—“That the justice or justices of the peace before whom any person shall be summarily convicted of any offence against this act, may cause the conviction to be drawn up according to the following form of words, or in any other form of words to the same or the like effect;”⁴⁰ (that is to say,)

³⁷ Similar to s. 40 of 1 & 2 Will. 4, c. 32, *ante*, p. 156. This penalty will be recovered as other penalties under 2 & 3 Will. 4, c. 68.

³⁸ See 1 & 2 Will. 4, c. 32, s. 42, *ante*, p. 158.

³⁹ Similar to 1 & 2 Will. 4, c. 32, s. 38, *ante*, pp. 158, 159.

⁴⁰ The evidence on the hearing must be reduced into writing (*Penman v. Watt*, 1845, 2 Brown, 586). It is sufficient to describe the *locus* in the conviction by the proprietorship or ownership, without stating the occupier (*Russell v. Lang*,

— } Be it remembered, that on the — day of —, 2 & 3 Will. 4,
 to wit, } in the year of our Lord —, at —, in the ^{c. 68.}
 county — [or division, &c., as the case may be], ^{No. 88.}
 A. O. is convicted before me J. P., one [or us J. P. and
 J. J. P., two, as the case may require], of his Majesty's
 justices of the peace for the said county [&c.], for that
 he the said A. O. did unlawfully on — at —, tres-
 pass or was found trespassing in search or pursuit of
 game [&c. as the case may be], and I [or we] do adjudge
 that the said A. O. shall for the said offence forfeit the sum
 of — [or we do adjudge that the said A. O. shall for the
 said offence forfeit the sum of —], and shall forthwith
 pay the said sum, together with the sum of — of ex-
 penses of process, and that in default of immediate pay-
 ment of the said sums, he the said A. O. shall be im-
 prisoned [or imprisoned and kept to hard labour] in the
 — of —, for the space of —, unless the said sums
 shall be sooner paid; [or, and I [or we] order that the
 said sums shall be paid by the said A. O. on or before the
 — day of —, and in default of payment on or before
 that day, I [or we] adjudge the said A. O. to be imprisoned
 [or imprisoned and kept to hard labour] in the — of
 — for the space of —, unless the said sums shall be
 sooner paid]; and I [or we] direct that the said sum of
 — (i. e. the penalty) shall be paid to —, being the
 minister of, &c., to be by him applied according to the
 directions of the statute in such case made and provided;
 and I [or we] order that the said sum of — of expenses
 shall be paid to — (the complainant).

Given under my hand [or our hands] the day and year
 first above-mentioned.

J. P.
 [or J. P. and J. J. P.]

1844, 2 Brown, 211); but the omission of the proprietor's name would be fatal (*Mackenzie v. Maberley*, 32 Sc. Jur. 7). The formal conviction may be drawn up long after the day of conviction, and two years' delay has been held not to invalidate the same (*Russell v. Lang, supra*). It should define the word "day" (*Robertson v. Adamson*, 32 Sc. Jur. 542); and it need only negative the leave of the proprietor (*Reper v. Daff*, 32 Sc. Jur. 478). The expenses of the conviction may be added to the penalty, though far exceeding the sum specified in the statute as penalty (*Porter v. Stewart*, 1859, 32 Sc. Jur. 147; *Paterson*, 175). *Vide Forms of Conviction*, *Barclay's Dig.* 435—438.

Sect. 13. *2 & 3 Will. 4, c. 68.* Convictions to be returned to sessions, and kept as evidence. Sect. 13. Sect. 13 enacts,—“That the justice or justices of the peace before whom any person shall be convicted of any offence punishable under this act, shall transmit every such conviction to the next court of general or quarter sessions of the peace for the county or division wherein the offence shall have been committed, there to be kept by the proper officer among the records of the court.”

Sect. 15. Convictions, &c. not to be quashed for want of form, or removable by advocacy, &c. Sect. 15. Sect. 15 enacts,—“That no conviction in pursuance of this act, or judgment given on appeal therefrom, shall be quashed for want of form, or be removed by advocation, suspension, or reduction into any superior court of law;⁴¹—and that no warrant of commitment shall be held void by reason of any defect therein, provided it be therein alleged that it is founded on a conviction, and there be a good and valid conviction to sustain the same.”

Sect. 7. Application of penalties. Sect. 7. Sect. 7 enacts,—“That every penalty and forfeiture for any offence against this act, shall be paid to the moderator or other officer of the Kirk session of the parish where the offence was committed, for the use and benefit of the poor of such parish.”⁴²

Sect. 14. Appeal to quarter sessions. Sect. 14. Sect. 14 enacts,—“That any person who shall think himself aggrieved by any conviction in pursuance of this act, may appeal to the justices at the next general or quarter sessions of the peace to be holden, not less than twelve days after such conviction, for the county or division wherein the

⁴¹ Similar to 1 & 2 Will. 4, c. 32, s. 45, *ante*, p. 161. The conviction can only be suspended or quashed in the Justiciary Court (*Russell v. Lang*, 1844, 2 Brown, 211); but if the commitment is bad on its face, the party may also apply to the Court of Session (*Evans v. Macloughlan*, 33 Sc. Jur. 293). The mere endurance of imprisonment does not bar the suspension of the conviction (*Russell v. Colquhoun*, 1845, 2 Brown, 572).

⁴² This section is a mere direction to the justices; and it is not necessary to specify in the conviction to whom the penalty is to be paid, as by the universal law of Scotland it is payable to the clerk of court, and by him applied (*Hume v. Meek*, 1846, 1 Ark. 88).

cause of complaint shall have arisen,—provided ^{2 & 3 Will. 4,}
 that such person shall give to the complainant a ^{c. 68.}
 notice in writing of such appeal, and of the cause
 and matter thereof, within three days after such
 conviction, and seven clear days at the least before
 such sessions, and shall also remain either in cus-
 tody until the sessions, or within such three days
 find a security, by bail bond before a justice, per-
 sonally to appear at the said sessions, and to try
 such appeal, and to abide the judgment of the court
 thereupon, and to pay such costs as shall be by ^{Sect. 14.}
 the court awarded ;—and upon such notice being
 given and such security being found, the justice
 before whom the same shall be produced shall
 liberate such person if in custody ;—and the court
 at such sessions shall hear and determine the matter
 of the appeal, and shall make such order therein,
 with or without costs to either party, as to the court
 shall seem meet, and in case of the dismissal of the
 appeal, or the affirmance of the conviction, shall
 order and adjudge the offender to be dealt with
 and punished according to the conviction, and to
 pay such costs as shall be awarded, and shall, if
 necessary, grant warrant for enforcing such judg-
 ment in common form.”⁴³

With regard to “the protection of persons
 acting in the execution of this act,” sect. 17
 enacts,—“That all actions and prosecutions to be
 commenced against any person for anything done
 in pursuance of this act shall be commenced within
 six calendar months after the fact committed, and
 not otherwise ;—and notice in writing of such action,
 and of cause thereof, shall be given to the defender
 one calendar month at least before the commence-

*Actions
under the act.
Venue.*

*Notice of
action.
Tender of
amends.*

⁴³ See notes to 1 & 2 Will. 4, c. 32, s. 44, *ante*, pp. 160,
 161. The specific grounds of the appeal must be stated in
 the notice of appeal (*Robertson v. Adamson*, 32 Sc. Jur. 542.)
 The 20 & 21 Vict. c. 43, which allows either party to appeal
 on a point of law to a superior court, does not apply to Scot-
 land (s. 15).

Sect. 17. *2 & 3 Will. 4, c. 68.* ment of the action ;—and no prosecutor shall recover in any such action if tender of sufficient amends shall have been made before such action brought, or if a sufficient sum of money shall have been paid into court after such action brought, by or on behalf of the defender.”⁴⁴

**10. Actions
for trespass at
common law.**

The 2 & 3 Will. 4, like the English act 1 & 2 Will. 4, c. 32, s. 46, *ante*, p. 97, saves the right of the owner or occupier whose land is trespassed upon, to bring his civil action against the trespasser, or he may adopt the summary proceeding before justices, but he is not allowed both remedies ; Sect. 16 enacting,—“ That nothing in this act contained shall prevent any person from proceeding by way of civil action to recover damages in respect of any trespass upon his land, whether committed in pursuit of game or otherwise,—save and except that where any proceedings shall have been instituted under the provisions of this act against any person for or in respect of any trespass, no action at law shall be maintainable for the same trespass by any person at whose instance or with whose concurrence or assent such proceedings shall have been instituted, but that such proceedings shall in such case be a bar to any such action, and may be given in evidence to this purpose and effect.”⁴⁵

Sect. 16.

**Right of
action for
trespass.**

The common law of Scotland, like that in England, gives the owner in fee the exclusive right to the surface of his land, and he can order off all strangers, there without his permission, and, if necessary, use just sufficient force to expel them (*Earl of Breadalbane v. Livingston*, 1790, Mor.

⁴⁴ *Vide* a similar enactment in 1 & 2 Will. 4, c. 32, s. 47, *ante*, pp. 165, 166, and notes thereto.

⁴⁵ *Vide* note 1, *ante*, pp. 97, 98, decisions upon the corresponding section of 1 & 2 Will. 4, c. 32.

4999; *Baird & Scott v. Thomson*, 1825, 3 S. & D. 448). Right of See *ante*, pp. 108—114, for the cases in which the action of trespass lies, most of which are applicable to Scotland. The trespasses of dogs, cats, &c., is treated on substantially the same principles as in England (see *ante*, p. 112), but a dog in pursuit of game cannot be destroyed (*Grant v. Barclay*, 1830, 5 Murray, 130);⁴⁶ nor is it legal to set spring-guns (*Craw*, 1827, Syme's Rep. 188; Hume's Com. 219), the act 24 & 25 Vict. c. 100, s. 31, *ante*, p. 111, not applying to Scotland. Fox hunting, however, is not a justifiable trespass at common law, as it is in England (see *ante*, pp. 105, 109); and the section 4, *ante*, p. 245, excepts the hunter from the trespass penalty only when the hare or fox has been started on lands on which he had a right to hunt;—the fox hunter is, therefore, liable for surface damage actually caused (*Colquhoun v. Buchanan*, 1785, Mor. 4997; *Marquis of Tweeddale v. Dalrymple*, 1778, Mor. 4992; *Watson v. Earl of Errol*, 1763, Mor. 4991; Irvine, G. L., 54—58). Although the action for damages lies for the trespass, the practice of bringing such actions and recovering nominal damages is scarcely known in Scotland, because the courts there give another more efficacious remedy by way of interdict or injunction (*Innes*, 1826, *Carnegie v. Lord Kintore*, 1829, 8 S. & D. 251). This interdict may be obtained by the owner or tenant from the local sheriff or county court, against ordinary trespassers, and it is enforced as in England an injunction is by the Court of Chancery; and both the landlord and tenant may join in this action (*Jolly*, 1828; *Paterson*, 169, 172).

⁴⁶ The recent act, 26 & 27 Vict. c. 100, renders owners of dogs in Scotland liable in certain cases for injuries done by their dogs to sheep and cattle.

SECT. 11. TABULAR LIST OF PENALTIES.

* * * These penalties are in addition to those in Chaps. V., VIII., IX. (part only), X. (part only), XI., XIII. and XVI., which apply to Scotland as well as England and Ireland, as pointed out, p. 225.

Offence.	Statute.	Number of Justices.	Penalty or Punishment.
1. Hunting or hawking, not having a plough-gate of land (<i>ante</i> , pp. 229, 230).	1621, c. 31.	Justices or sheriff.	£100. (£8 : 6s. 8d. English).
2. Hunting in grounds, or using nets, or shooting hares, without warrant of proprietor (<i>ante</i> , p. 234).	1707, c. 13.	Id.	£20 Scots. (£1 : 13s. 4d. English).
3. Killing, selling, or buying certain birds of game out of season (<i>ante</i> , p. 235).	1707, c. 13 ; 13 Geo. 3, c. 54, s. 1.	Two or more, or sheriff.	£20 Scots. (1707, c. 13), £5 each bird (13 Geo. 3, c. 54, s. 1).
4. Possession of hares, birds of game, &c., without leave of person qualified (<i>ante</i> , p. 240).	13 Geo. 3, c. 54, s. 3.	Id.	1st offence, 20s. ; 2nd and subsequent offences, 40s.
5. Making muirburn from April 11 to Nov. 1 (<i>ante</i> , p. 239).	Id. s. 4.	Id.	1st offence, 40s. ; 2nd offence, £5 ; 3rd and subsequent offences, £10.
6. Trespassing in the daytime upon lands in search of game, deer, &c. (<i>ante</i> , p. 242),	2 & 3 Will. 4, c. 68, s. 1.	One.	Not exceeding £2.
7. The like, to the number of five or more, (<i>ante</i> , p. 243).	Id.	One.	Not exceeding £5.
8. Trespassers refusing to tell their names, &c., or refusing to quit land, &c. (<i>ante</i> , p. 244).	Id. s. 2.	One.	Not exceeding £5.
9. Trespassers assaulting or obstructing persons in execution of act (<i>ante</i> , p. 245).	Id. s. 6.	Two.	Not exceeding £5, above other penalties, for trespassing.

CHAPTER XIX.

THE GAME LAWS OF IRELAND.

THE following previous chapters of this work are applicable to Ireland :—I. as to property in game, &c., *ante*, p. 26; II. as to manors, &c., *ante*, p. 41; V. licences to kill game, deer, &c., *ante*, p. 58, wherein the provisions of the 5 & 6 Vict. c. 81, which applies exclusively to Ireland, are given; VII. Sect. 2, action of trespass at common law,¹ *ante*, p. 108—114; VIII. taking game by army and navy officers, *ante*, pp. 118, 119; IX. placing poisoned grain, &c., on ground, &c., *ante*, pp. 124—128; X. licences to deal in game, *ante*, p. 132; XI. buying and selling game by other than licensed dealers, *ante*, p. 145; XIII. poaching by night, *ante*, p. 167; XVI. the Poaching Prevention Act, *ante*, p. 196; XVII. procedure for penalties under revenue laws, *ante*, p. 220. It should be stated that there are few cumulative penalties in Ireland, and that by 10 Will. 3, c. 8, s. 17, an offender cannot be punished under that act as well as under “any other law or statute for the same offence.” The enactments of the Irish game laws we purpose giving under the following heads :—

Certain previous chapters applicable to Ireland.

Divisions of the subject.

SECT. 1. *What is “Game,” and the property in it*, p. 256.

“ 2. *The Qualifications to kill Game and keep Dogs; and the Penalties*, p. 257.

¹ Except, of course, the procedure in the actions, which must be according to the practice in the Irish Civil Courts.

- SECT. 3. *Landlord and Tenant's Rights to Game,***
&c., p. 262.
- ,, 4. *Of Gamekeepers and their Powers,*
p. 262.
- ,, 5. *The Seasons for Sporting, p. 263.*
- ,, 6. *Unlawfully killing, &c., Game, Deer,*
&c., p. 269.
- ,, 7. *Trespasses in pursuit of Game, &c.,*
p. 275.
- ,, 8. *Of Muirburn and Destroying Game,*
&c., p. 276.
- ,, 9. *Dealing in and Unlawful Possession of*
Game, &c., p. 277.
- ,, 10. *Tabular List of Penalties, p. 280.*
-

1. *What is
 "game," and
 the property
 in it.*

"Game" in
 Ireland.

Property in
 game.

**SECT. 1. WHAT IS "GAME," AND THE PROPERTY
 IN IT.**

The word "game" in Ireland includes deer, hares, pheasants, partridges, grouse, *landrails and quail*, moor game, heath game, and wild turkeys or bustards.¹ For most purposes, however, the same birds and animals are game which are game in England and Scotland, especially for the purposes of the seasons, and the dealing in game by licensed and unlicensed persons, as we have seen, *ante*, pp. 132, 135, note ⁸; but yet there is no general or national definition, and the particular statute as to each or more of them does not extend beyond those which are named as such.

The ownership of game as a species of property is the same as in England, and as described in Chap. I., *ante*, p. 26.

¹ See Levinge's *Irish Game Laws*, 1, 2.

**SECT. 2. THE QUALIFICATIONS TO KILL GAME
AND KEEP DOGS; AND THE PENALTIES.**

*2. Qualifica-
tions to kill
game and
keep dogs, &c.*

In Ireland, there is a property qualification requisite, besides the government certificate made necessary by the 23 & 24 Vict. c. 90, and 5 & 6 Vict. c. 81, to enable a person to sport, and there are also qualifications necessary to authorize the keeping of certain dogs. The qualification by estate was first provided by 13 Rich. 2, c. 13, increased by 10 Will. 3, c. 8, and amended by 27 Geo. 3, c. 35. The enactments and portions of enactments now in force as to qualifications, with the penalties, are the following :—

13 Rich. 2, c. 13,—“ITEM, forasmuch as divers artificers, labourers, and servants, and grooms, keep greyhounds and other dogs, and on the holydays, when good Christian people be at church, hearing divine service, they go hunting in parks, warrens,² and connigries of lords and others, to the very great destruction of the same, and some time under such colour they make their assemblies, conferences, and conspiracies for to rise and disobey their allegiance; it is ordained and assented, That no manner of artificer, labourer, nor any other layman which hath not lands or tenements to the value of forty shillings by year, nor any priest nor other clerk, if he be not advanced to the value of ten pounds by year, shall * * * use fyrets, heys, nets, harepipes, nor cords, nor other engines for to take or destroy deer, hares, nor conies, nor other gentleman’s game,³ upon pain of one year’s imprisonment;—and that the justices of peace have power to enquire and shall enquire of the offenders in this behalf, and punish them by the pain aforesaid.”⁴

*13 Rich. 2,
c. 13.*

*None shall
hunt but
they which
have a suffi-
cient living.*

² See *ante*, p. 41, Chap. II., as to parks, warrens, &c.

³ As to the word “game,” see 27 Geo. 3, c. 35, s. 6, *post*, pp. 277, 278, and sect. 4, *post*, p. 266, which treat landrails and quails as within that term.

⁴ More specific offences are enacted in other acts.

10 Will. 3,
c. 8.

Persons not having cer-
tain freehold
not to keep
any hound or
spaniel, ex-
cept whelps,
for persons
qualified,

Sect. 2.

on pain of
being taken
away by any
justice, or
person
having 40*l.*
per annum
freehold in
the county,
who may
detain or
dispose of
the same.

**Penalty on
conviction
5*l.* levied by
distress,**

**to the poor
and pro-
secutor.**

The 10 Will. 3, c. 8,⁵ s. 2, enacts,—“That no person or persons whatsoever, [not having the same estate qualification as required by s. 10, *post*, pp. 259, 260, for a setting dog or bitch, (27 Geo. 3, c. 35, s. 8, *which repealed the qualification inserted in this place,*)] shall have or keep any hound, beagle, greyhound or land spaniel within this kingdom, other than and except whelps under the age of twelve months, which shall be kept at nurse for persons qualified within this act for the having the same, on pain that such hound, beagle, greyhound or spaniel so kept contrary hereunto shall or may be seized and taken away by any justice of the peace of the respective counties where the same shall be so kept,—or by any person or persons authorized thereunto, by warrant under the hand and seal of such justice of the peace, *or* by any person having a freehold of the yearly value of forty pounds or upwards within such county,—which justice of the peace and freeholder respectively seizing such hound, beagle, greyhound or spaniel may detain the same to his and their own uses, or otherwise dispose of the same as they shall think fit;—and all and every person or persons so keeping such hound, beagle, greyhound or spaniel contrary hereunto, and being thereof convict before some justice of the peace of the county where such offence shall be committed, on the oath of one or more credible witness or witnesses, which oath such justice of the peace is hereby authorized to administer, shall, for every such offence, forfeit and lose the sum of five pounds, to be levied by warrant of such justice of the peace before whom such offender shall be convict, by distress and sale of the goods of such offender, returning the overplus (if any be) to the party distrained on;—the one moiety thereof to the informer who shall prosecute for the same, the other moiety to be issued

⁵ Intituled “An Act for the Preservation of the Game, and the more easy Conviction of such as shall destroy the same.” Sect. 1 saves all existing laws as to game.

for the use of the poor of the parish where such a fence shall be committed.⁶

Sect. 3 enacts,—“That no freeholder or other person qualified within the meaning of this act to have or keep any such hound, beagle, greyhound or spaniel, shall shelter, conceal or cover any such hound, beagle, greyhound or spaniel, for any person or persons not qualified to have or keep the same as aforesaid, on pain that such freeholder or other person offending contrary hereunto shall, for every such offence, forfeit and lose the sum of forty pounds, to be recovered by action of debt, bill, plaint or information, in any of his Majesty’s courts of record in Dublin, in which no essoign, protection or wager of law shall be allowed, or more than one imparlance;—the one moiety of such forfeiture to be to the King’s Majesty, his heirs and successors, the other moiety thereof to him or them that will sue for the same.”

[Sect. 4, as to the disability of Papists being Papists employed as fowler for a Protestant, was repealed by 10 Geo. 4, c. 7.]

By sect. 8 (set out fully, *post*, p. 270), no person not having freehold estate of 40*l.* a year, or personal estate of the value of 1,000*l.*, can shoot at, kill, take or destroy any hares, pheasant, partridge, grouse or quail, under a penalty of 10*s.* There is no property qualification relative to deer; see s. 5, *post*, p. 269.

Sect. 9 enacts,—“That nothing herein contained shall extend, or be construed to extend, to restrain or hinder any tenant or tenants to any person or persons not restrained by this act from having and keeping any hound, beagle, spaniel or greyhound, but in the company and attendance of his landlord only.”

Sect. 10 enacts,—“That no person or persons . . . Persons not

⁶ By the Fines Act, 14 & 15 Vict. c. 90, s. 13, one-third or less of this penalty, will be payable to the informer. See *post*, p. 265, for provisions of s. 17 of 10 Will. 3, c. 8, as to “procedure.”

10 Will. 3,
c. 8.
having free-
hold of 100*l.*
yearly, or
1000*l.* per-
sonal estate,
not to keep a
setting dog,
unless li-
censed at
quarter ses-
sions after
Christmas to
make such ;

Sect. 10.

and must
every two
years during
continuance
of license,
train up to
hunt on dry
foot, other-
wise the
license of
no force.

Dogs may be
kept and
used in a
manor, with
lord's con-
sent.

Sect. 20.

. . . not having an estate of freehold of the yearly value of one hundred pounds or upwards, or a personal estate of the value of one thousand pounds, shall have or keep any setting dog or bitch [by 27 Geo. 3, c. 35, s. 8, extended to "any pointer, hound, beagle, greyhound *or* land spaniel"] other than such person or persons as shall be allowed and licensed thereunto by the justices of peace of the county where he shall live, at the general quarter sessions of the peace to be held for such county next after Christmas in every year, in order to the making and training up setting dogs or bitches, and that under such regulations only, and not otherwise, as shall be allowed and specified in such license;—and such person or persons so to be licensed, shall also, and are hereby required every two years during the continuance of such their license, to train up, teach, and make some one or more hound or bounds, to hunt on dry foot;—and in default thereof, that such license so obtained shall be and become of no force and effect, and shall be reputed and deemed so to have been from the granting the same;—and the person or persons to whom the same was granted shall be liable to the same penalties as if he or they had acted without such license.”⁷

Sect. 20 enacts,—“That nothing herein contained shall restrain any person within any manor from keeping hounds, beagles, greyhounds, spaniels, or setting dogs within the same, to hunt, course, set with, or otherwise use in such manor, only so as the same be allowed of and kept with the consent and free permission of the lord of the manor for the time being, in which the same shall be so kept, appear- ing by license under the hand and seal of such lord of the manor.” [See 27 Geo. 3, c. 35, s. 18, *post*, p. 261.]

⁷ There is no specific penalty attached to the prohibition against keeping these dogs (Levinge's G. L. 108, 125). The offence, no doubt, is indictable at common law.

27 Geo. 3, c. 35, s. 16, enacts,—“That where any <sup>27 Geo. 3,
c. 35.</sup> dog or dogs of whatever species, belonging to any person or persons not qualified or authorized to keep setting dogs or hounds, [as 10 Will. 3, c. 8, s. 10, p. 260,] shall be known to destroy any sort of game, ^{Dogs of persons not qualified to keep setting dogs or hounds committing the matters herein, may be destroyed by virtue of a Justice's warrant.} or to kill or wound sheep, or bite horses, to the annoyance of travellers on the highway, or which in any other respect shall prove a nuisance, on information thereof given upon the oath of one credible witness before a justice of the peace for the county, county of a city, or county of a town where such dog or dogs shall happen to be, it shall and may be lawful for such justice to summon the owner of such dog or dogs to appear before him, and after a full enquiry to issue his warrant for destroying such dog or dogs as shall be informed against, in case he shall see sufficient cause for the same, but not otherwise.”⁸

Sect. 17 enacts,—“That nothing herein contained shall prevent any person or persons from obtaining such further or other redress for any damage which he or they shall sustain by means of any such dog or dogs as he or they may be entitled to by the laws now in force.”⁹

Sect. 18 enacts,—“That nothing in this act contained shall be construed to affect, injure or lessen the rights of lord of manors. in any way whatsoever the rights or privileges of lords of manors.”¹⁰

⁸ The prosecution must be within six calendar months (s. 20); and there is an appeal given by s. 23. See Sect. 5, *post*, pp. 267—269, for “Procedure” under 27 Geo. 3, c. 35.

⁹ As to lords of manors, see 10 Will. 3, c. 8, ss. 15, 16, *post*, pp. 262, 263, and *ante*, p. 44.

*3. Landlord
and tenant's
rights to
game, &c.*

Sect. 3. LANDLORD AND TENANT'S RIGHTS TO GAME, &C.

What we have said in the chapter on the Scotch Game Laws, as to there being no statutory enactments upon the landlord and tenant's rights to game, is equally applicable to Ireland, there being only the common law (*ante*, pp. 226, 230); and where also the government certificate is necessary under the 23 & 24 Vict. c. 90, ss. 2, 5 (*ante*, pp. 60, 64). There is no corresponding act in Ireland to the 11 & 12 Vict. c. 29, 30, as to hares in England and Scotland (*ante*, pp. 88, 230—232).

*4. Of game-
keepers and
their powers.*

10 Will. 3, c. 8.

Certain lords of manors or royalties may authorize gamekeepers, who may seize guns and dogs,

Sect. 15.

Sect. 4. OF GAMEKEEPERS AND THEIR POWERS.

The 10 Will. 3, c. 8, s. 15, enacts,—“That all lords of manors or other royalties, not under the degree of an esquire,¹⁰ may from henceforth, by writing under their hands and seals, authorize one or more gamekeeper or gamekeepers within their respective manors or royalties, who being thereto so authorized, may take and seize all such guns, hounds, greyhounds, beagles, land spaniels or setting-dogs, as within the precincts of such respective manors or royalties shall be used by such person or persons, who by this act are prohibited to keep or use the same” [see *ante*, pp. 258—260].¹¹

Sect. 16, “to the end all keepers of parks and

¹⁰ The designation of “esquire” has led to many frivolous distinctions unworthy of occupying the time of any court of justice. Sons of peers, barristers-at-law, justices of the peace, while in the commission, sheriffs of counties, captains in the army and navy, &c. are esquires. (See Levinge's G. L. p. 25, for various decisions; Paterson G. L. 195.)

¹¹ See cases on a similar power in 1 & 2 Will. 4, c. 32, ss. 13, 14, *ante*, pp. 50—52; s. 8, *ante*, p. 82. This section gives the power of seizure to the lord in Ireland, which is not so in England.

gamekeepers, duly authorized as aforesaid, may be ^{10 Will. 3,}
 indemnified in the execution of their office," enacts,
 c. 8.
 —"That all lords of manors or other royalties, not under the degree of an esquire, or any person or persons so authorized by them as aforesaid, shall and may within their respective manors or royalties oppose and resist such offenders in killing or destroying the game contrary to this act in the *night-time*, in the same manner, and be equally indemnified for so doing, as if such fact had been committed within any ancient chace, park, or warren whatso-ever."¹²

Sect. 20, *ante*, p. 260, authorizes the keeping and using dogs in a manor with consent of the lord.

The other enactments relating to gamekeepers may here be referred to:—

9 Geo. 4, c. 69, s. 2, *ante*, p. 170, and 7 & 8 Vict. c. 29, s. 1, *ante*, p. 173, authorizing them to apprehend night poachers:

23 & 24 Vict. c. 90, *ante*, p. 61, and 5 & 6 Vict. c. 81, ss. 3—7, *ante*, pp. 74, 75 (see note³, p. 60), licences to gamekeepers, and their authority under them [There are no assessed-tax duties in Ireland on servants or dogs, the 58 Geo. 3, c. 54, being repealed by 4 Geo. 4, c. 9; 16 & 17 Vict. c. 90, applying to Great Britain only]:

5 & 6 Vict. c. 81, s. 8, *ante*, p. 76, authorizing them to demand the licences and names, &c., of trespassers:

10 Will. 3, c. 8, s. 11, *post*, p. 271, penalty on them for selling game without master's leave.

Sect. 5. THE SEASONS FOR SPORTING.

See *ante*, p. 9, a tabular statement of the season for each bird. The seasons in Ireland are regulated

5. *The seasons for sporting.*

¹² As to parks, &c., see *ante*, p. 41; as to night poaching, see Chap. XIII., *ante*, p. 161; and *post*, p. 274, Sect. 6.

10 Will. 3,
c. 8.

by 10 Will. 3, c. 8, amended by 27 Geo. 3, c. 35, and again by 37 Geo. 3, c. 21; and the prohibited periods for *dealing* in the birds, (but not for *taking* or *killing* them, that being regulated by the enactments in force in Ireland,) have been more recently altered in Ireland by the English season being imported for that purpose into Ireland by 23 & 24 Vict. c. 90, s. 13, *ante*, p. 185; and, therefore, at some periods of the year it may be an offence to kill the game, and yet not an offence to sell or buy it.

Hunting,
coursing, or
killing male
deer before
the 10th of
June, or
male fallow
deer after
Michaelmas,
unless in his
own ground.

Penalty 51.

Sect. 6.

*Procedure for
penalty.*

10 Will. 3, c. 8, s. 6, enacts,—“That no person or persons whatsoever shall in any year hunt, course, or kill any male deer, before the tenth day of June in such year, unless it be in the park or proper ground of the person hunting, coursing, or killing the same;—nor shall course, hunt, or kill any male fallow deer after Michaelmas, in any year, unless in the proper ground of the person hunting, coursing, or killing the same,—on pain that all and every person and persons offending contrary hereunto shall for every such offence forfeit and lose the sum of five pounds;—such offence to be heard, examined, and determined by and before such justices of the peace as aforesaid, and the forfeiture for the same levied, divided, and paid to such person or persons, and in such manner, as is hereinbefore appointed for the other offence of shooting deer contrary to this act.”¹³

The mode of recovery of the penalty referred to in the last section is in Sect. 5 of the act [*post*, p. 269], “before one or more justices of the county where such offence shall be committed,”— . . . the one moiety [of the penalty] to be to the use of the poor of the parish, the other moiety to the informant; and to be levied on the goods of the offender.

¹³ There is no close season in England or Scotland for deer. The 24 & 25 Vict. c. 96, *ante*, p. 182, Chap. XIV., also contains enactments as to hunting deer. An excise certificate is also required under 23 & 24 Vict. c. 90, *ante*, pp. 60, 61.

[By the more recent and general act, 14 & 15 Vict. c. 90, 10 Will. 3, c. s. 13, one-third of all penalties may be awarded to the in-⁸ former, and the remainder to the crown, Levinge's G. L. 75.] The 10 Will. 3, c. 8, s. 17, "to the end that no person convicted of any of the offences as aforesaid may escape punishment by their flight or other removal, after such conviction," enacts,—"that it shall and may be lawful for, and hereby authority is given, after such conviction as aforesaid, to the constable or other officer or person or persons prosecuting, to detain in custody such offender or offenders (in case he or they shall not presently pay the monies due by such conviction), during such reasonable time as a return may be conveniently had and made to the warrant for the distress upon such conviction, so as such detainer do not exceed two days:—provided, that, where any offender shall be punished by force of this act, he shall not be prosecuted upon, nor incur the penalty of any other law or statute for the same offence."

In default of distress for the penalty, 14 & 15 Vict. c. 90, s. 3, provides that the offender is to be committed to prison for the like period as he might have been under the Petty Sessions Act, 1851, 14 & 15 Vict. c. 93 (which act, by s. 42, was not to extend to the game acts, except as to the forms to be used), viz., for not exceeding three calendar months, with or without hard labour, according to a scale given, unless sooner paid, by the warrant of any one justice (14 & 15 Vict. c. 93, ss. 22, 23).

Although no right of appeal to the quarter sessions is given by 10 Will. 3, c. 8, 14 & 15 Vict. c. 90, s. 9, gives the defendant that right where the penalty imposed exceeds the sum of 40s., in the manner directed by 14 & 15 Vict. c. 93, s. 24 (Levinge's G. L. 83—88). Either party may, instead, appeal to a superior court on a question of law (20 & 21 Vict. c. 43, *ante*, pp. 154, 155).

The 27 Geo. 3, c. 35, s. 4, provides a variety of offences as to the seasons, dealing in game, and night offences; and will be referred to in other divisions of this chapter. It is as follows:—"Every person who shall wilfully take, kill, or destroy, or who shall sell or expose to sale, or who shall buy or cause to be bought, any . . . [as to moor game, heath game, grouse, partridge, quail and landrail, here inserted, this section was altered by 37 Geo. 3, c. 21, s. 2, p. 267] . . . pheasant . . . or wild turkey,

Killing, selling or buying pheasants and wild turkeys at the times herein, forfeit 5*s.* for each bird.

27 Geo. 3,
c. 35.

Sect. 4.

Making use
of any gun,
&c. to kill
game on a
Sunday, pe-
nalty 5*l.*;

Killing game
by night, ex-
cept as
herein,

penalty 5*l.*
for each hare
or bird;

tracing
game in
snow, if not
qualified, or
on own
lands, pe-
nalty 5*l.*;

destroying
eggs or nests,
penalty 5*l.*

between the tenth day of January and first day of September in any year, shall forfeit a sum not exceeding five pounds for every such pheasant . . . or wild turkey ;¹⁴ . . . [a provision inserted here as to buying hares “between the first Monday in every November and the first Monday in every July following” is repealed by 26 Vict. c. 19] . . .

“ And that every person who shall make use of any gun, snare, net, or other engine, to take, kill or destroy any moor-game, heath-game, or grouse, pheasant, partridge, quail, landrail, or wild turkey, or other wild fowl, or any hare or rabbit on a Sunday, shall forfeit for every such offence a sum not exceeding five pounds ;¹⁴

“ And that every person who shall wilfully take, kill, or destroy any hare, pheasant, partridge, quail, landrail, moor-game, heath-game, or grouse in the night, between one hour after sun setting and one hour before sun rising, unless qualified to take or kill game, and upon his or her own lands, or duly authorized so to do,¹⁵ shall forfeit a sum not exceeding five pounds for every such hare, pheasant, partridge, quail, landrail, moor-game, heath-game, or grouse so taken, killed or destroyed ;¹⁴

“ And that every person who shall trace any hare or other game whatsoever in the snow, unless qualified to take or kill game, and upon his or her own lands, shall for every such offence forfeit a sum not exceeding five pounds ;¹⁴

“ And that every person who shall wilfully destroy the eggs or nest of any pheasant, partridge, quail,

¹⁴ Vide “Procedure,” post, p. 267, 268, for the recovery of these penalties.

¹⁵ See also s. 5, post, p. 269, in Sect. 6; and 9 Geo. 4, c. 69, ante, p. 168, Chap. XIII., which is a later enactment, as to killing game by night, and will supersede this enactment except as to quails and landrails. The time here defined as the “night” is practically the same as in s. 12 of the latter act, ante, p. 167. As to hares when not in a warren or breeding-ground, see 24 & 25 Vict. c. 96, s. 17, ante, p. 193, Chap. XV. As to the seasons, see the observations at the commencement of this section, p. 264.

landrail, moor-game, heath-game, or grouse, wild ^{27 Geo. 3, c.}
 duck, widgeon, plover, or snipe, shall forfeit for ^{35.}
 every such offence a sum not exceeding five
 pounds.”¹⁴

37 Geo. 3, c. 21, after reciting part of 27 Geo. 3, ^{37 Geo. 3, c.}
 c. 35, s. 4, as relates to selling moor game, &c.
(omitted from that section, ante, p. 265), sect. 1
 repeals such part; and sect. 2 enacts,—“That from ^{No person}
 and after the passing of this act no person or persons ^{shall take,}
 shall, on any pretence whatsoever, take, kill, destroy, ^{kill or have}
 any moor-^{game,} carry, sell, buy, or have in his or their possession, or ^{any moor-}
 use, any moor-game, heath-game, or grouse, between ^{grouse,} par-
 the tenth day of December and twentieth day of ^{tridge, hand-}
 August in any year, or any partridge, land-rail, or ^{rail or quail,}
 quail, between the tenth day of January and the ^{Sect. 2.}
 twentieth day of September in any year;

“And if any person or persons shall take, kill, ^{Penalty 5l.}
 destroy, carry, sell, buy, or have in his, her, or their ^{each bird.}
 possession, or make use of any moor-game, heath-
 game, or grouse, between the tenth day of December
 and twentieth day of August in any year,—or any
 partridge, land-rail, or quail, between the tenth day
 of January and the twentieth day of September in
 any year,—every such person or persons shall be
 liable to the same penalty as by the said act is laid ^{[27 Geo. 3, c.}
 on every person or persons transgressing the same;^{15 35.]}
 —such penalty to be imposed, inflicted, received,
 and applied in like manner, and under the same
 rules and regulations as in and by the said recited
 act is directed with respect to the application of the
 forfeitures to be incurred for any offence against
 the Game Laws.”¹⁶

The *procedure* for the recovery of the penalties ^{Procedure}
 for the offences created by 27 Geo. 3, c. 35, and 37 ^{under 27 Geo.}
 Geo. 3, c. 21, *supra*, will be under the following ^{s. c. 35.}

¹⁴ See note ¹⁴, *ante*, p. 266.

¹⁵ The penalty is 5*l.* for every bird; see 27 Geo. 3, c. 35,
 s. 4, *supra.*

¹⁶ *Vide* mode of recovery, *infra*, and p. 268.

27 Geo. 3.
c. 35.

provisions of 27 Geo. 3, c. 35, and certain supplemental enactments :—

How offences
shall be de-
termined.

Sect. 19 enacts,—“That all offences against this act, not herein otherwise provided for, shall and may be inquired into, and determined either by the oath or oaths of one or more credible witness or witnesses, or by the confession of the parties accused before one or more of his Majesty’s justices of the peace for any county, county of a city, or county of a town, where the offence shall be committed or found ;—and such justice of the peace is hereby empowered to grant and issue his warrant for the distraining and sale of the goods of the party offending, in order to raise the penalty or forfeiture ;—and in case no sufficient distress shall be found, the person or persons so offending shall, by warrant of such justice of the peace, be committed to the house of industry or house of correction, there to be kept to hard labour, or to the gaol of such county, city or town, there to remain without bail or mainprize, for any time not exceeding one calendar month, or until such fine shall be paid.”

Prosecution
within six
months.

Sect. 20 enacts,—“That such prosecution shall be commenced within six calendar months after the offence shall be committed.”

Application
of forfeitures.

Sect 21 enacts,—“That all forfeitures to be incurred for an offence against the game laws shall, when recovered, be paid one half to the informer or prosecutor, and the other half to the use of the county infirmary or house of industry, first deducting a sum after the rate of two shillings for every twenty, which shall be paid to the constable or constables for his or their trouble in executing the warrants of such justice of the peace, if such justice shall think fit.” [Penalties must now be applied according to the General Act, 14 & 15 Vict. c. 90, s. 13, *ante*, p. 265.]

Appeal to
quarter
sessions.

Sect. 23 enacts,—“That if any person shall think him or herself aggrieved by any thing done in pursuance of the laws relative to the game, by any justice of the peace, such person may appeal to the next general sessions for the said county where the cause of complaint shall arise, who are hereby authorized and required to hear and determine the same, and if need be, to cause to be impanelled a jury to try the fact or facts which may arise upon such matter of complaint, and to award such costs to the parties appealed against as they the said justices shall think just and reasonable,—such person appealing having first entered into a recognizance before some justice of the peace for said

county, with two sufficient sureties conditioned to try such ²⁷ Geo. 3, c. appeal, and abide the order of, and to pay such costs as ^{35.} shall be awarded by, the said justices,—and the determination of the said justices shall be final, binding and conclusive to all intents and purposes;—and no order made concerning any matters, proceedings, conviction or convictions aforesaid, relative to the game, shall be quashed for want of form, or be removed by *certiorari*, or any other or removed writ or process whatsoever, into his Majesty's Court of King's Bench in Dublin." [The procedure upon appealing will now be regulated by 14 & 15 Vict c. 93, s. 24, which, although sect. 42 says it shall not extend to game cases, except as to the use of the forms, is referred to in and engrafted upon the act passed at the same time,—14 & 15 Vict. c. 90, s. 9 (Levinge's G. L. 86, 87).]

SECT. 6. UNLAWFULLY KILLING, &c., GAME,
DEER, &c.

In addition to the penalties in the enactments we ^{6. Unlaw-} shall here give, there are several for killing or taking <sup>*fully killing,*
&c., game,</sup> game in Sect. 2, upon the *Qualifications to kill deer, &c.:* *Game, ante*, p. 257, and also in the Sect. 5, as to the seasons for sporting, which should be referred to also. Of course these penalties are also cumulative upon the revenue penalty for acting without a game certificate.

The 10 Will. 3, c. 8, s. 5, enacts,—“That no ^{10 Will. 3,} person or persons whatsoever shall shoot any deer ^{c. 8.} at any season of the year, except on his own ground ^{Shooting} deer, except only, or on the ground of such person or persons to whom the person shooting such deer, being a Protestant, shall be a menial family servant at the time of shooting the same, and that by warrant only under the hand of such his master, and no otherwise, on pain that every person so offending contrary hereunto, being thereof convict before one or more justice or justices of the peace of the county where such offence shall be committed, on

10 Will. 3,
c. 8.

Sect. 5.

Penalty on
conviction
5*s.* to the
poor and
informer.

oath of one or more credible witnesses, which oath such justice or justices are hereby authorized to administer, shall, for every such offence, forfeit and lose the sum of five pounds;—the one moiety thereof to be to the use of the poor of the parish where such offence shall be committed, the other moiety thereof to him or them who shall give information and make proof of such offence before such justice or justices of the peace,—the same to be levied on the goods and chattels of the offender, by warrant under the hand and seal of such justice or justices, who are hereby required to grant such warrant, and to pay or order payment of the money levied thereby accordingly.”¹⁸

Sect. 6.

Tracing
game in the
snow, or de-
stroying eggs
of wild fowl,
or taking
hares, &c.

Sect. 8.

[Sect. 6, also as to deer, is at p. 264.]
Sect. 8 enacts,—“That no person or persons shall trace any hares, or other game whatsoever, in the snow,¹⁹—nor shall destroy the eggs or nest of any partridge, pheasant, grouse, quail, duck, or other wild fowl;—nor shall any person or persons, not having such freehold estate of forty pounds per annum, or personal estate to the value of one thousand pounds, as aforesaid,²⁰ shoot at, kill, take, or destroy

¹⁸ See note ¹³, *ante*, p. 264, also applicable here. The penalty will now be applied under 14 & 15 Vict. c. 90, s. 13.

¹⁹ The same offence as in 27 Geo. 3, c. 35, s. 4, *ante*, p. 265, 266, where the penalty is 5*s.*

²⁰ “As aforesaid” refers to the qualification required by s. 2 to keep dogs, which, as we have seen, is repealed by 27 Geo. 3, c. 35, s. 8, *ante*, p. 268; but it remains in force as far as this offence is concerned; as also does that in 13 Rich. 2, c. 18, *ante*, p. 257, all which qualifications must be possessed by the sportsman, and co-exist with the game certificate. The freehold estate conferring the qualification need not be a legal estate, as an equitable one will suffice; but the yearly value must be over and above all debts; and it may arise out of any hereditaments other than land, provided it is an estate in possession and not in reversion (*Wetherell v. Hall*, Cald. 230; *Mallock v. Eastly*, 7 Mod. 482; *Lownes v. Lewis*, Cald. 188; *Blake v. Luxton*, 6 T. R. 292; *Levinge's G. L.* 11, 12). It has been held in a recent case that a qualified

any hare or hares, partridge, pheasant, grouse, or ^{10 Will. 3,}
 quail;—or any person whatsoever shoot at, take,
 kill, or destroy any house dove or pigeon, other
 than such as shall be in or belonging unto the dove-
 house or pigeon-house of the person or persons so
 shooting at, killing, or destroying the same,²¹—on
 pain that every person offending contrary hereunto,
 in any of the particulars aforesaid, shall, for every
 such offence, being thereof convict before one or
 more justice or justices of the peace of the county
 where the same shall be committed, or the offender
 apprehended, forfeit and lose the sum of ten shil-
 lings;—the one moiety thereof to the use of the
 poor of the parish where such offence shall be com-
 mitted, to be paid to the churchwardens of such
 parish for such use; the other moiety to him or
 them who shall inform and prosecute for the same
 as aforesaid.”²² [The whipping here provided was
 repealed by 27 Geo. 3, c. 35, s. 2.]

Sect. 11 enacts,—“That no person or persons
 keeping or using a gun to fowl with, as servant to
 any person not restrained by this act from keeping
 the same, shall sell or dispose of any fowl or game
 he or they shall kill, to any person whatsoever, but
 shall bring all such fowl or game to his or their
 master’s house, for the use of his or their said Sect. 11.
 master, on pain that every person offending con-
 trary hereunto shall for every such offence forfeit
 twenty shillings;—the said offence to be heard, ex-
 amined, and determined by and before such persons
 and the forfeiture levied and distributed, and divided
 in such manner as is hereinbefore appointed for the

person is entitled to employ a servant not possessing the pro-
 perty qualification, required by this section, to kill and hunt
 game in his absence (*Foot v. Hudson*, 10 Ir. Com. Law R.
 509, in error).

²¹ The 24 & 25 Vict. c. 96, s. 23, in Chap. XXIII., *post*,
 and referred to at pp. 37, 38, would appear to supersede some
 of the offences here stated in regard to house doves and pigeons.

²² The mode of recovery is by distress; see s. 17, *ante*, p.
 265, thereon, and the new application of penalties.

^{c. 8.}
 Shooting, &c.
 pigeons, save
 belonging to
 his own dove-
 house.

^{Penalty 10s.}
 One moiety
 for the poor,
 the other to
 prosecutor.

<sup>Servants to
 persons qua-
 lified not to
 sell the game,
 but bring to
 master’s
 house.</sup>

<sup>Penalty 20s.
 as before for
 shooting
 deer.</sup>

10 Will. 3.,
c. 8.
offence of shooting deer contrary to this act" [i. e. in Sect. 5, *ante*, pp. 269, 270, which see for the recovery and application of the penalty].

Non-commissioned officer or private soldier not to go out of quarters with firearms, unless by command, &c.

Sect. 12.

Penalty 5s. to the informer;

levied by distress and sale; if none, ten days' imprisonment.

Officer in chief to deliver up offender on demand;

Sect. 12 enacts,—“That no commissioned officer or private soldier belonging to any regiment, troop or company, which is or shall be within this kingdom, shall be permitted to go out of his garrison, or other quarters, with any gun or other firearms, unless the same be on a march, or a commanded party, by the command of the officer in chief then present and commanding in such respective garrison or quarters, on pain that such non-commissioned officer and private soldier, being thereof convict before some one or more justice or justices of the peace for the county where such offence shall be committed, shall, for every such offence, forfeit and lose the sum of five shillings, to be paid to such person or persons²³ as shall give information of and make out such offence before such justice of the peace;—and to be levied on the warrant of such justice of the peace, by distress and sale of goods of the person offending, rendering the overplus to the party disengaged on;—and in case no sufficient distress shall be found, the person or persons offending shall, by warrant of such justice of the peace, be sent to the common gaol for such county, there to be kept in close custody without bail or mainprize for ten days;

“And for the better putting this act in execution, the officer in chief in such garrison or quarters, to which such offender shall then belong, shall, on demand, render the body of the offender into the hand of the justice of peace, or other civil magistrate, to be dealt with according to law:—And in case such officer shall neglect or refuse to deliver up such offender, such officer being thereof convict before one or more justice or justices of the peace of the county where such garrison or quarters shall be,

²³ The application of the penalty is now directed by 14 & 15 Vict. c. 90, s. 18, *ante*, p. 265.

shall, for such offence, forfeit and lose the sum of 10*W.M. 3.*
 five pounds, to be levied on the warrant of such
 justice or justices, by distress and sale of the goods
 of such officer, rendering the overplus (if any be),—
 one moiety whereof shall be to the use of the poor
 of the parish where such offence shall be committed,
 the other moiety to him and them that shall inform
 of, and make out such offence before such justice or
 justices.”²³

Sect. 13 enacts,—“That no commissioned officer No commis-
 of any regiment, troop or company, within this sioned officer
 kingdom, or any person employed by or under him, to shoot or
 shall shoot or course with greybounds any deer, course deer,
 hare, or other game whatsoever, except on his or other
 own ground, or otherwise by the free permission game, unless
 and leave first had and obtained of the owner of the on his own
 ground or soil where he or they shall so hunt or ground, or
 course,”²⁴ on pain of forfeiture by such commissioned with owner's
 officer of the sum of five pounds for every such leave, penalty
 offence,—which offences shall also be heard and 5*l.* as before
 determined before one or more justice or justices of for shooting
 the peace for the county where the same shall be Sect. 13.
 committed;—and the said forfeiture to be levied,
 distributed and divided in the same manner as the
 said forfeiture for shooting of deer contrary to this
 act is herein before appointed to be levied, distri-
 buted and divided” [*i. e.* in sect. 5, *ante*, pp. 269,
 270].

Sect. 19 recites that “great mischiefs do ensue Tradesmen
 by inferior tradesmen, apprentices, and other disso- and appren-
 lute persons²⁵ neglecting their trades and employ- tices hunt-
 ments, who follow hunting, fishing, and other ing, &c. (un-
 game, to the ruin of themselves and damage of less with the
 their neighbours:” for remedy whereof it enacts,— master qual-
 “That if any such person as aforesaid shall pre- ified), liable
 to penalties
 of those on
 whom game
 found, and to
 trespass.

²³ See note ²³, *ante*, p. 272.

²⁴ Similar offences in regard to “game or fish,” are punishable by the Army and Marine Mutiny Acts, *ante*, pp. 118, 119.

²⁵ See cases in Levinge's G. L. 113, 114, for decisions as to what persons come within these descriptions.

10 Will. 3,
c. 8.

sume to hunt, hawk, fish or fowl, unless in company with the master of such apprentice, duly qualified by law, such person or persons shall be liable to the same penalties as the persons on whom such game shall be found as aforesaid are liable unto by virtue of this act;—and shall or may also be sued and prosecuted for their wilful trespass in such their coming on any person's land; and if found guilty thereof, the plaintiff shall not only recover his damages, but his full costs of suit, any former laws to the contrary notwithstanding."

Taking game
by night.

27 Geo. 3, c.
35.

Persons, un-
less qualified,
using dog,
gun, snare,
&c., to take
game in the
night.

Sect. 5.

Penalty 10.
on indict-
ment at
sessions.

There are certain provisions in the 10 Will. 3, c. 8, and 27 Geo. 3, c. 35, in reference to night poaching, viz., 10 Will. 3, c. 8, s. 16, *ante*, p. 262, 27 Geo. 3, c. 35, s. 4, *ante*, p. 266, and sect. 5, which is as follows:—"That every person who shall use any dog, gun, snare, net or other engine, or who shall set or fix any snare, net or other engine, to take, kill or destroy any hare, rabbit, pheasant, partridge, quail, land-rail, moor-game, heath-game or grouse, snipe or woodcock in the night, unless qualified to take or kill game, and upon his or her own land, or duly authorized so to do,"²⁶ shall for every such offence, being thereof lawfully convicted upon an indictment to be preferred against him, her or them, at the general sessions to be held for the county, county of a city, or county of a town, where such offence shall be committed, forfeit a sum of ten pounds, and suffer such other punishment by imprisonment or whipping as the justices before whom such offence shall be tried shall direct."²⁷

²⁶ The "night" is not here defined, but it is in s. 4, *ante*, p. 266, and is practically the same as in the 9 Geo. 4, c. 69, s. 12, *ante*, p. 167, which will apply. The offence here is the *using* of a gun, &c. to take, and s. 4 the actual *taking* of, hares, &c., which is punishable summarily. In England and Scotland, persons cannot destroy hares or other game by night with firearms (see *ante*, pp. 91, 282.)

²⁷ The procedure before justices in investigating the charge before committal of the accused for trial, is regulated by 14 & 15 Vict. c. 98, ss. 11, 14—19.

SECT. 7. TRESPASSES IN PURSUIT OF GAME, &C.

27 Geo. 3, c. 35, s. 10, enacts,—“That no person, not being duly authorized,²⁸ shall go or enter upon the land of any other person or persons to look for, set, spring, start, follow, shoot, course, hunt, hawk, or otherwise pursue, take or destroy any sort of game, woodcock, snipe, duck, teal or widgeon,²⁹ —and that each and every person and persons offending in any of the particulars herein set forth shall, for every such offence, forfeit a sum not exceeding ten pounds.”³⁰ [See s. 13, p. 276.]

Sect. 11 enacts,—“That no person shall be construed to be within the meaning of this act as looking for game, unless such person shall appear to be provided with a dog or dogs, gun or guns, net or nets, or some other implements for taking or destroying game.”

Sect. 12 enacts,—“That nothing herein contained shall subject any person or persons *duly qualified* to take or kill game, his or their servants or necessary attendants, to any of the penalties hereby inflicted for following or pursuing their *four-footed* game into the lands of other persons.”³¹

Sect. 13 enacts,—“That such other person or persons may have such remedies and such redress as may be recovered.

²⁸ See *ante*, p. 262, “Landlord and Tenant’s Rights to the Game.”

²⁹ This is the section corresponding to that in the English act, 1 & 2 Will. 4, c. 32, s. 30, *ante*, pp. 98, 99, and extends to duck, teal and widgeon, not in the latter section. There must be a personal entry. (See note 4, *ante*, p. 99, and see s. 11, *infra*.)

³⁰ This penalty is five times greater than in England or Scotland, but a conviction does not entail a forfeiture of the game certificate as in England and Scotland. See 23 & 24 Vict. c. 90, s. 11, *ante*, p. 71. For the mode of procedure for recovery of this penalty, see *ante*, pp. 268, 269. The 10 Will. 3, c. 8, s. 19, *ante*, pp. 273, 274, relates to apprentices and others trespassing.

³¹ This section will not, it is apprehended, justify a person pursuing *winged game* into the lands of others, and, consequently, he would be liable to the action of trespass (Levinge’s G. L. 33, 34). See further note ²⁸.

27 Geo. 3,
c. 35.

Sect. 13.

against persons so following their game, for any damage they shall do to such other persons as such other persons may have or be entitled to by law, anything herein contained to the contrary notwithstanding.”³²

SECT. 8. OF MUIRBURN AND DESTROYING GAME, &c.

8. Of Muir-
burn and de-
stroying
game, &c.:

10 Will. 3,
c. 8.

None to burn
any moun-
tain heath,
&c., save be-
tween the
14th of June
and 2nd of
February.

Sect. 7.

27 Geo. 3,
c. 35.

Not to ex-
tend to such

The 10 Will. 3, c. 8, s. 7, “for the preservation of hares, grouse and other game, being in mountains, hills, moors, bogs or heaths in this kingdom,” enacts,—“That no person or persons shall burn on any mountain, hill, moor, bog, heath or waste ground, any grig, ling, furs, heath, goss or fern, at any other season of the year, save only between the fourteenth day of June and the second day of February in every year, on pain that every person and persons offending contrary hereunto shall, for every such offence, forfeit and lose the sum of five pounds,—such offence to be likewise heard, examined and determined by and before such justices of the peace as aforesaid, and the forfeiture for the same levied, distributed, divided and paid to such person and persons and in such manner as is hereinbefore appointed for the said other offence of shooting deer contrary to this act” [i. e., in sect. 5, *ante*, pp. 269, 270]. But by 27 Geo. 3, c. 35, s. 3, after reciting this section, it is enacted,—“That nothing in said act shall extend or be construed to extend to

³² It would appear from this section that the owner of the land has a twofold remedy for the trespass—under section 10, as well as by action for damages at common law; for the 10 Will. 3, c. 8, s. 17, *ante*, p. 265, which provides that offenders punished under that statute are not to be prosecuted upon nor incur the penalty of any other law or statute for the same offence, will not apply to offences under this act of 27 Geo. 3, c. 35 (Levinge's G. L. 81). The common law of Ireland as to trespass on another's ground is the same as in England; and subject to the above provisions, the act 24 & 25 Vict. c. 100, s. 31, and the law and cases in Sect. 2 of Chap. VII., *ante*, pp. 108—114, will apply therefore to Ireland.

subject the owner or occupier of any such mountain, hill, moor, bog, heath or waste ground, to said penalty for burning *grig, ling, furs, heath, goss or fern*, at any time of the year on such part of said mountain, hill, moor, bog, heath or waste ground, as shall be broken up for the purpose of agriculture or planting.”

10 Will. 3, c. 8.
as is broken up for agriculture or planting.

Sect. 3.

As to destroying game, most of the enactments in this chapter as to the taking of game provide also against its destruction, and the eggs of game. See 10 Will. 3, c. 8, s. 8, *ante*, p. 270, and 27 Geo. 3, c. 35, s. 4, *ante*, pp. 265, 266, and s. 5, *ante*, p. 274. The 24 & 25 Vict. c. 97, s. 16, *ante*, p. 129, as to firing crops, &c., also applies to Ireland, and so does “The Poisoned Grain Prohibition Act, 1863,” 26 & 27 Vict. c. 113, *ante*, pp. 124—127, Chap. IX.

SECT. 9. DEALING IN AND UNLAWFUL POSSESSION OF GAME.

Servants of qualified persons selling game, see 9. *Dealing in and unlawful possession of game:*
10 Will. 3, c. 8, s. 11, *ante*, p. 271.

As to buying or selling game out of season, see 27 Geo. 3, c. 35, s. 4, *ante*, pp. 265, 266, and 37 Geo. 3, c. 21, s. 2, *ante*, p. 267, and the observations made at pp. 263, 264, as to the English season being extended to Ireland as respects *dealing* in the birds which are common to England and Ireland, and for which a season is provided by the English law. The 23 & 24 Vict. c. 90, s. 13, has likewise extended to Ireland, as will be seen, *ante*, p. 135, the provisions of 1 & 2 Will. 4, c. 32, as to the grant by justices of licences to sell game and dealing in game, which see in Chap. X., *ante*, p. 132, and Chap. XI., *ante*, p. 145.

The Poaching Prevention Act, 25 & 26 Vict. c. 114, *ante*, p. 200, Chap. XVI., deals with the unlawful possession of game. The enactments in the Irish Act are as follow:—27 Geo. 3, c. 35, s. 6, Unlawful possession of game. 27 Geo. 3, c. 35.

27 Geo. 3,
c. 35.

Higgler, &c.
having pos-
session of
game, not
property of
qualified
persons.

Sect. 6.

Penalty 5*t.*

Game found
in a shop, &c.
of poultier,
&c.

Sect. 7.

Penalty 5*t.*

enacts,—“That if any higgler, chapman, carrier, victualler or alehouse-keeper shall, from and after the passing of this act, have in his, her or their custody or possession any hare, pheasant, partridge, moor-game, heath-game, grouse, landrail or quail,—or shall buy, sell or offer to sell, any hare, pheasant, partridge, moor-game, heath-game, grouse, landrail or quail,—every such higgler, chapman, inn-keeper, victualler, alehouse-keeper, or carrier, unless *such game* in the hands of such carrier ³³ be sent up by a person or persons qualified to kill the game, shall, upon conviction of such offence before a justice of the peace, forfeit the sum of five pounds.” ³⁴

Sect. 7 enacts,—“That if any hare, pheasant, partridge, moor-game, heath-game, grouse, landrail or quail, shall be found in the shop, house, or possession of any poultierer, salesman, fishmonger, cook or pastrycook, the same shall be adjudged, deemed and taken to be an exposing thereof to sell within the true intent and meaning of this act,—and the offender, on conviction thereof before a justice of the peace, shall forfeit the sum of five pounds.” ³⁴

³³ As respects other than quails and landrails, the English law as to dealing in them apparently supersedes this enactment. There is a provision in the English act, 1 & 2 Will. 4, c. 32, s. 26, *ante*, p. 147, as to innkeepers having game, which is now applicable to Ireland. As to the carrier, to support a conviction against him for having game in his possession, it is sufficient *prima facie* evidence that the game was found in his possession as carrier; it not being necessary to prove that he had actual knowledge of its being in his possession; neither would it be a sufficient defence for him to show he had not such knowledge, but it might be a good defence for him to show that it was put into the waggon by the servant for his own benefit, and contrary to the orders of, and in fraud of, his master the defendant (Levinge's G. L. 124, citing *R. v. Marsh*, 2 Barn. & C. 717; Chitty's G. L. 106, n).

³⁴ *Vide ante*, pp. 268, 269, for the procedure for the recovery of this penalty.

Sect. 9 enacts,—“That every higgler, cleever,<sup>27 Geo. 3.
c. 35.</sup> carrier, stage-coachman or chapman, in whose pos-
session any hare, pheasant, partridge, quail, land-
rail, moor-game, heath-game *or* grouse, shall be
found,—and every person not being qualified to
take or kill game, who shall sell *or* expose to sale,<sup>Higglers and
others having
game which
has not been
got from per-
sons qual-
ified.</sup>
or who shall have in his or her possession any hare,
pheasant, partridge, quail, landrail, moor-game,
heath-game *or* grouse,—and shall not prove to the
satisfaction of any of his Majesty's justices of the
peace of such county, county of a city, or county of
a town where the offence shall be committed, *or*
where the offence shall be found, before whom he
or she shall be brought, that he, she, or they came
fairly and honestly by the same, and bought or re-
ceived the same from some person or persons quali-
fied to take or kill game,—shall forfeit for every
such hare, pheasant, partridge, quail, landrail, moor-
game, heath-game *or* grouse, a sum not exceeding
five pounds;³⁵ *Sec. 9.*

“And that it shall and may be lawful for any per-
son or persons, being thereunto authorized by war-
rant under the hand and seal of any of his Majesty's
justices of the peace for any county, county of a
city, or county of a town within their respective
jurisdictions, to search the houses, outhouses or
other places of any higgler, cleever, tavern-keeper or
inn-keeper, carrier, stage-coachman or chapman,<sup>Search to be
made by
persons
authorized;</sup>
not qualified to take or kill game, who shall be sus-
pected upon good and sufficient ground to have or
keep in his custody or possession any hare, phea-
asant, partridge, quail, landrail, moor-game, heath-
game *or* grouse;

“And that it shall be lawful for any of his Ma-<sup>all found to
be seized.</sup>
jesty's justices of the peace within their respective
jurisdictions to take and seize any hare, pheasant,
partridge, quail, landrail, moor-game, heath-game
or grouse which he shall find in the possession of

³⁵ *Vide* notes ²³ and ²⁴, p. 278, equally applicable here.

27 Geo. 3,
c. 35.

*51. for each
not legally
come by.*

any person or persons not qualified to take or kill game,—and that every such person in whose possession such game be found, if he or she shall not prove to the satisfaction of such justice, that he or she came fairly and honestly by the same, and bought or received the same from some person or persons qualified to take or kill game, shall forfeit for every such hare, pheasant, partridge, quail, landrail, moor-game, heath-game or grouse a sum not exceeding five pounds.”³⁶

SECT. 10. TABULAR LIST OF PENALTIES.

* * * These Penalties are in addition to those in Chapters V., VIII. (part only), IX. (part only), X., XI., XIII., XIV., XV. and XVI., ante—and Chapters XX., XXII. and XXIII., post, also apply to Ireland as well as England.

Offence.	Statute.	Number of Justices.	Penalty or Punishment.
1. Persons without landed qualifications using nets, &c. to take deer or game (<i>ante</i> , p. 257).	13 Rich. 2, c. 13.	Two.	One year's imprisonment.
2. Persons not having required amount of real or personal estate, keeping hounds, &c. (<i>ante</i> , p. 258)	10 Will. 3, c. 8, s. 2.	One.	£5, and forfeiture of the dog.
3. Persons qualified concealing hound, &c. for those who are not qualified (<i>ante</i> , p. 259).	Id. s. 3.	(By action.)	£40.
4. Shooting deer, except on offender's own ground, or as servant (<i>ante</i> , p. 269, 270).	Id. s. 5.	One or more.	£5.

³⁵ *Vide notes* ³³ and ³⁴, p. 278, equally applicable here.

Offence.	Statute.	Number of Justices.	Penalty or Punishment.
5. Hunting or killing a male deer before 10th June, or any male fallow deer after Michaelmas,—unless in own park, &c. (<i>ante</i> , p. 264).	10 Will. 3, c. 8, s. 6.	One or more.	£5.
6. Burning mountain heath, &c. between 2nd Feb. and 14th June (<i>ante</i> , p. 276).	Id. s. 7.	Id.	£5.
7. Tracing game in the snow, or destroying eggs of game and wild fowl, or (unless qualified by estate) shooting at, killing, &c. hares, partridges, &c., or killing, &c. any house-dove or pigeon not his own (<i>ante</i> , pp. 270, 271).	Id. s. 8.	One or more.	10s. (See also offence 14.)
8. Keeping setting dog or bitch without licence from quarter sessions (<i>ante</i> , p. 260).	Id. s. 10.	(Indictable misde-meanor.)	See note 7, <i>ante</i> , p. 260.
9. Servants of qualified persons not bringing home game (<i>ante</i> , p. 271).	Id. s. 11.	One or more.	20s.
10. Noncommissioned officer or soldier going out of quarters with fire-arms (<i>ante</i> , p. 272).	Id. s. 12.	Id.	5s.
11. Chief officer of garrison not delivering up offender (<i>ante</i> , p. 272).	Id.	Id.	£5.
12. Officer or servant shooting or coursing deer, hare or other game (<i>ante</i> , p. 273).	Id. s. 13.	Id.	£5.

Offence.	Statute.	Number of Justices.	Penalty or Punishment.
13. Tradesmen and apprentices hunting, &c.	10 Will. 3, c. 8, s. 19.	One or more.	(As other persons, <i>ante</i> , p. 273.)
14. Taking, selling, &c. pheasants and wild turkeys out of season (see offence 20), or using gun to kill game on a Sunday, or taking hare, pheasant, &c. in night, or tracing hare or game in the snow, or destroying eggs of birds (<i>ante</i> , p. 266).	27 Geo. 3, c. 35, s. 4.	Id.	£5 for each bird, &c.; and £5 for Sunday, tracing, and offences as to eggs.
15. Unqualified persons using dog, gun, &c., to take game in the night (<i>ante</i> , p. 274).	Id. s. 5.	(Indictable at sessions.)	£10, and imprisonment.
16. Higgler, victuallers, &c., having game, except for persons qualified (<i>ante</i> , pp. 277, 278).	Id. s. 6.	One.	£5.
17. Poulterer, &c. having same in shop, &c. (<i>ante</i> , p. 278).	Id. s. 7.	One.	£5.
18. Higgler, and others not qualified to kill game, selling, &c. game which they had procured unlawfully (<i>ante</i> , p. 279).	Id. s. 9.	One.	Not exceeding £5.
19. Unauthorized persons entering lands to look for game (<i>ante</i> , p. 275).	Id. s. 10.	One or more.	Not exceeding £10.
20. Killing, or dealing in, or having moor game, heath game, partridge, landrail or quail out of season (<i>ante</i> , p. 267).	37 Geo. 3, c. 21, s. 2.	Id.	£5 each bird.

CHAPTER XX.

AS TO PRIVATE AND LOCAL FISHERIES, IN
ENGLAND AND IRELAND.

-
1. *Private Fisheries*, infra.
 2. *Local Fisheries*, p. 291.
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1. PRIVATE FISHERIES.

BEFORE giving the enactments which relate to the 1. *Private Fisheries*: criminal proceedings and penalties for injuries to private fisheries, we would give some brief remarks The rights of on the several kinds of fishery.¹ When the lord of a manor hath the soil on both sides of a river, he hath the right of fishing : the owner of the soil of a private or fresh river, hath a separate or several fishery ; and he that hath a *free fishery*, has a property in the fish. There are three sorts of fisheries and piscaries : 1, free fishery ; 2, several or separate fishery ; and 3, common of piscary. A *free fishery* is an exclusive right of fishing in a public river, and is a royal franchise. A *several fishery* is an exclusive right of fishing in the soil of another, and it appears to be the better opinion that a person can have this kind of fishery without being also owner of the soil,² as by a grant immediately from

¹ A more elaborate statement of the law upon the private rights of individuals in fisheries is in Chitty's Treatise on the Game Laws, 267—207; and see Jagoe's Ir. Fisheries.

² See recent cases of *Marshall v. Ullswater Steam Navigation Company*, 8 Law T., N. S. 416; 27 J. P. 516; *Little v. Wingham*, 11 Ir. Com. Law K. 63; *Ashworth v. Browne*, 10 Ir. Ch. R. 421. The Irish Fishery Act, 5 & 6 Vict. c. 106, s. 114, contains a definition of "several fishery."

such owner; and there may be a prescriptive right in a subject to a several fishery in an arm of the sea; and such a fishery enjoyed by a subject, under a grant in a navigable river, where the tide flows, is an incorporeal hereditament, and a term for years in it cannot be created except by deed. *Common of piscary*, or fishery, is a liberty of fishery in common with others in a stream or river, the soil whereof belongs to a third person.

Fish on the
sea-shore.

Prima facie, every subject has a right to take fish found upon the sea-shore between high and low-water mark; but that general right may be abridged by the existence of an exclusive right in some individual.³ Any man may erect a fish pond without licence, because it is a matter of profit for the increase of victuals (2 Inst. 199). Rights of fishery held by lords of manors are preserved as respects enfranchised copyholds, and under the Inclosure Acts (see note⁹, *ante*, pp. 86, 87).

Stealing fish
in a tank, &c.

Besides the enactments *infra*, as to the taking of fish in running and other private waters, it is now clear to be larceny at common law (*i. e.*, simple larceny, punishable on indictment), to take live fish, when in a tank, net or stew (or in any other place than those mentioned in these enactments), which is private property, and where they may be taken at the will of the owner at any time.⁴ An indictment will also lie for stealing any fish, which serve for food, when they are dead.

24 & 25 Vict.
c. 96.

Taking fish
in any water

By the Larceny Consolidation Act of 1861, applicable to England and Ireland, 24 & 25 Vict. c. 96, s. 24, it is enacted,⁵—“Whosoever shall un-

³ Tomlins' Law Dict. tit. “*Fishing.*”

⁴ Roscoe's Ev. in Cr. Cas., 5th ed., pp. 465, 601; Woolrych, G. L. 170; and see *ante*, p. 38.

⁵ By this clause there are four offences enacted:—

1st. Taking or destroying fish in water adjoining or belonging to the dwelling-house [which means actual contact and not separated by a walk and fence, *R. v. Hodges, M. & M.* 341] of the owner of the water, or to any one having a right of fishery therein, which

lawfully⁶ and wilfully take or destroy any fish in 24 & 25 Vict. c. 96.
any water which shall run through or be in any land adjoining or belonging to the dwelling-house of any person being the owner of such water, or having a right of fishery therein, shall be guilty of a misdemeanor;⁷—and whosoever shall unlawfully and wilfully take or destroy, or attempt to take or destroy, any fish in any water not being such as hereinbefore mentioned, but which shall be private property, or in which there shall be any private right of fishery, shall, on conviction thereof before a justice of the peace, forfeit and pay, over and above the value of the fish taken or destroyed (if any), such sum of money, not exceeding five pounds, as to the justice shall seem meet:⁸

“Provided, that nothing hereinbefore contained shall extend to any person angling between the beginning of the last hour before sunrise and the ex-

situate in
land belong-
ing to a dwell-
ing-house;
in a private
fishery else-
where.

Sect. 24.

-
- is an indictable misdemeanor, punishable by the common law with fine and imprisonment in addition to or in lieu of sureties (s. 117);
- 2nd. Taking or destroying fish in water being merely private water, or merely subject to a right of fishery, for which a fine not exceeding 5*l.*, besides the value of the fish, is imposed;
- 3rd. Angling in the day-time in water belonging to a dwelling-house, &c., as in the 1st case, for which the offender is liable to a fine not exceeding 5*l.*;
- 4th. Angling in the day-time in private water, as in the 2nd case, which is punishable by a fine of not exceeding 2*l.*.

⁶ The term unlawfully” implies without any claim of right or title in the offender. If such a claim is set up by him and is made *bond fide* and with some show of reason, (which is for the justices to determine,) the justices’ jurisdiction will be ousted (*Reg. v. Peak*, 2 Law T., N. S. 536; and see *Leatt v. Vine*, and *Cornwell v. Sanders*, *ante*, p. 100, note), subject to review by a superior court under 20 & 21 Vict. c. 43.

⁷ For the procedure for this indictable offence, see *ante*, pp. 187, 188. Offenders in the night may be apprehended by any person for this misdemeanor (14 & 15 Vict. c. 19, s. 11). The punishment is as in the 1st case in note ⁸, *supra*.

⁸ *Vide post*, p. 288, for the “Procedure” for the recovery of penalties.

24 & 25 Vict. c. 96. piration of the first hour after sunset;—but whosoever shall by angling between the beginning of the last hour before sunrise and the expiration of the first hour after sunset unlawfully and wilfully take or destroy,—or attempt to take or destroy,—any fish in any such water as first mentioned, shall, on conviction before a justice of the peace, forfeit and pay any sum not exceeding five pounds,—and if in any such water as last mentioned, he shall, on the like conviction, forfeit and pay any sum not exceeding two pounds, as to the justices shall seem meet;⁶

Provision as
to boundaries
of parishes.

“And if the boundary of any parish, township, or vill shall happen to be in or by the side of any such water as is in this section before mentioned, it shall be sufficient to prove that the offence was committed either in the parish, township or vill, named in the indictment or information, or in any parish, township or vill adjoining thereto.”

The tackle of
fishers may
be seized.

Sect. 25.

Angler, on
seizure of his
tackle, ex-
empt from
penalty.

Sect. 25 enacts,—“If any person shall at any time be found fishing against the provisions of this act, the owner of the ground, water or fishery where such offender shall be so found, his servant, or any person authorized by him, may demand from such offender any rod, line, hook, net or other implement for taking or destroying fish which shall then be in his possession,—and, in case such offender shall not immediately deliver up the same, may seize and take the same from him for the use of such owner:—provided, that any person angling against the provisions of this act, between the beginning of the last hour before sunrise and the expira-

⁶ See note ⁸, *ante*, p. 285.

⁹ That part of the seashore which lies between high and low water mark, is within and part of the adjoining county, so that the justices of the county have jurisdiction to take cognizance of offences committed thereon, whether the land be covered with water or not at the time the offences are committed (*Embleton v. Brown*, 30 L. J. (N. S.), M. C. 1; 25 J. P. 38; 6 Jur. (N. S.) 1298, decided under the repealed act 7 & 8 Geo. 4, c. 29, s. 34).

tion of the first hour after sunset, from whom any ^{24 & 25 Vict.} _{c. 96.} implement used by anglers shall be taken, or by whom the same shall be so delivered up, shall, by the taking or delivering thereof, be exempted from the payment of any damages or penalty for such angling."

Sect. 26 enacts,—“Whosoever shall steal any oysters or oyster brood from any oyster bed, laying, or fishery, being the property of any other person, and sufficiently marked out or known as such, shall be guilty of felony, and being convicted thereof shall be liable to be punished as in the case of simple larceny;¹⁰

“And whosoever shall unlawfully and wilfully use any dredge, or any net, instrument, or engine whatsoever, within the limits of any oyster bed, laying, or fishery, being the property of any other person, and sufficiently marked out or known as such, for the purpose of taking oysters or oyster brood, although none shall be actually taken,—or shall unlawfully and wilfully, with any net, instrument, or engine, drag upon the ground or soil of any such fishery,—shall be guilty of a misdemeanor,¹¹—and being convicted thereof shall be liable, at the discretion of the court, to be imprisoned for any term not exceeding three months, with or without hard labour, and with or without solitary confinement;

“And it shall be sufficient in any indictment to describe either by name or otherwise the bed, laying, or fishery in which any of the said offences shall have been committed, without stating the same to be in any particular parish, township, or vill;

“Provided, that nothing in this section contained shall prevent any person from catching or fishing for any floating fish within the limits of any oyster

¹⁰ The punishment for simple larceny is penal servitude for three years, or imprisonment not exceeding two years (24 & 25 Vict. c. 96, s. 4). See note ¹¹, *infra*.

¹¹ See *ante*, pp. 187, 188, for the procedure in England and Ireland for these indictable offences; and *Forms of Statements of Offences*, Nos. 93, 94, 95, *post*, p. 290.

24 & 25 Vict. c. 96. fishery with any net, instrument, or engine adapted for taking floating fish only."

Salmon fisheries.

See Chap. XXI., p. 293, as to salmon fisheries in which there are private rights also.

Procedure for penalties.

The procedure in England and Ireland for the recovery of the penalties here named will be precisely as pointed out in Chap. XIV. *ante*, pp. 185—187. It should be stated that the power given by s. 103, there referred to, to apprehend persons found committing offences against the 24 & 25 Vict. c. 96, does not extend to the "offence of angling in the day-time." *Vide* the Statements of Offences, No. 90—92, *post*, pp. 289, 290.

24 & 25 Vict. c. 97.

Breaking down the dam of a fishery, &c., or mill dam, or poisoning fish.

The Malicious Injuries Consolidation Act of 1861, 24 & 25 Vict. c. 97, s. 32, enacts,—“Whoever shall unlawfully and maliciously cut through, break down, or otherwise destroy the dam, floodgate, or sluice of any fish-pond, or of any water which shall be private property, or in which there shall be any private right of fishery, with intent thereby to take or destroy any of the fish in such pond or water, or so as thereby to cause the loss or destruction of any of the fish,—or shall unlawfully and maliciously put any lime or other noxious material in any such pond or water, with intent thereby to destroy any of the fish that may then be or that may thereafter be put therein,—or shall unlawfully and maliciously cut through, break down, or otherwise destroy the dam or floodgate of any mill pond, reservoir, or pool,—shall be guilty of a misdemeanor, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for any term not exceeding seven years and not less than three years,—or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement, and, if a male under the age of sixteen years, with or without whipping.”¹²

Sect. 32.

Procedure.

¹² *Vide* Chap. IX. *ante*, p. 129, note, for the procedure for these indictable offences in England and Ireland. The costs of prosecution, &c., before the examining magistrate, and of the

The provisions of the Annual Army and Marine Officers in Mutiny Acts as to officers taking fish without leave ^{the army or navy taking fish.} are given *ante*, pp. 118, 119.

FORMS.¹²

For that he the said A. B. on &c., at &c., unlawfully 24 & 25 Vict. and wilfully did take [or destroy] ten fish called trout, in c. 96. certain water running through [or being in] certain land 89. Taking, there situate, called —, adjoining [or belonging] to the &c. fish in private water dwelling-house of [the said] C. D. there situate, of which belonging or said water the said C. D. was then and still is the owner adjoining such dwell- [or in which said water the said C. D. had then and still ing house has a right of fishery], contrary, &c. (indictable). (Id. s. 24.)

For that you [or he the said A. B.] on &c., at &c., un- 90. The like, lawfully and wilfully did take [or destroy] not belonging [or attempt to take, or destroy] to adjoining otherwise than by angling between the beginning of the house of last hour before sunrise, and the expiration of the first hour owner. (Id.) after sunset, to wit, at — o'clock at —, [five] fish called [perch], of the price and value of sixpence, then being found in certain water, to wit, a pond [or stream] of water there, being the private property of [the said] C. D. [the complainant], [or wherein the said C. D., the complainant, then had a private right of fishery], and not running through or being in any land adjoining or belonging to the dwelling-house of any person being the owner of the said water, or having a right of fishery therein, contrary, &c.

For that you [or he the said A. B.] on &c., at &c., by 91. The like, angling between the beginning of the last hour before sun- by angling in rise, and the expiration of the first hour after sunset, to the day-time in water ad- wit, about the hour of — o'clock in the forenoon of the joining a dwelling- house (sum- marily). (Id.)

trial, are allowed as in cases of felony (s. 77); and offenders in the night may be apprehended by any person (14 & 15 Vict. c. 19, s. 11). Forms of statements of offences, Nos. 96, 97, 98, *post*, pp. 290, 291.

¹² These statements of offences are to be used with the general forms in 11 & 12 Vict. c. 42, 43.

24 & 25 Vict. same day, unlawfully and wilfully did take [*or destroy*]
c. 96. [*or attempt to take, or destroy*]

[five] fish called [perch], of the price and value of six-pence, then being found* in certain water there situate, called —, running through and being in certain land belonging [*or adjoining*] to the dwelling-house of one [*or the said*] C. D., the complainant, and of which water the said C. D. was then the owner, [*or* in which said water the said C. D. then had a private right of fishery], contrary, &c.

92. The like, *Proceed to the asterisk* in the last form, and then* :—in angling in other water in the daytime. (Id. s. 24.) a certain pond [*or stream*] of water there, the private property of C. D. [*or* wherein C. D. then had a private right of fishery], and not running through or being in any land adjoining or belonging to the dwelling-house of any person being the owner of the said water, or having a right of fishery therein, contrary, &c.

93. Stealing oysters from bed of another (indictable). (Id. s. 26.) For that he the said A. B. on &c., at &c., feloniously did steal — oysters, of the value of —, from a certain oyster bed [*or laying, or fishery*] called — there situate, the property of C. D., and sufficiently [*marked out and*] known as the property of the said C. D., contrary, &c.

94. Using dredge for taking oysters. (Id.) For that he the said A. B. on &c., at &c., unlawfully and wilfully did use a certain dredge [*or net, or instrument, or engine, to wit, —*], within the limits of a certain oyster bed [*or laying, or fishery*] called —, there situate, the property of [*the said*] C. D., and sufficiently [*marked out and*] known as the property of the said C. D., for the purpose then of taking oysters [*or oyster brood*], contrary, &c.

95. Dragging net on oyster fishery. (Id.) For that he the said A. B. on &c., at &c., unlawfully and wilfully, with a certain net [*or instrument, or engine, called —*], did drag upon the ground and soil of a certain oyster bed [*or laying, or fishery*] called —, there situate, the property of [*the said*] C. D., and sufficiently [*marked out and*] known as the property of the said C. D., contrary, &c.

96. Damaging fish. For that he the said A. B. on &c., at &c., unlawfully and maliciously did cut through [*or break down, or destroy*]

the dam [*or floodgate, or sluice*] of a certain fish pond of ponds (24 & [the said] C. D., 25 Vict. c. 97, s. 32), indict-
 [or of certain water which is private property, and of able.
 which the said C. D. was then and still is the owner, *or* in which said water the said C. D. then had and still has a right of fishery]
 there situate, with intent thereby then to take [*or destroy*] the fish then being in the said pond [*or water*],
 [or to cause the loss and destruction of divers of the fish then being in the said pond, *or water*],
 contrary, &c.

For that he the said A. B. on &c., at &c., unlawfully ^{97.} Putting and maliciously did put a large quantity of lime [*or noxious* lime in fish- material, to wit, ——], into a certain fishpond of [the said] ponds. (Id.) C. D. there situate,
 [or into certain water, &c. *as in the last form*], with intent thereby to destroy the fish then being in the said pond [*or water*], contrary, &c.

For that he the said A. B. on &c., at &c., unlawfully ^{98.} Destroy- and maliciously did cut through [*or break down, or destroy*] ing mill-dam, the dam [*or floodgate*] of a certain pond [*or reservoir, or pool*] there, of C. D., contrary, &c.

2. LOCAL FISHERIES.

See observations, *ante*, p. 284, as to fishing on the sea-shore.

2. Local fisheries.
Fish on the sea-shore.

There are a variety of private or local acts in force relative to fisheries in particular rivers and districts, and many have been wholly or partially repealed by the “Salmon Fishery Act, 1861” (*post*, p. 293, note, and p. 320). The principal acts are those relating to the rivers Tweed and Thames, *viz.*, as to the Tweed, 20 & 21 Vict. c. cxlviii. *Tweed.* amended by 22 & 23 Vict. c. lxx., some of the offences under which are punishable in England; and as to the Thames, fishing in it is regulated by the 30 Geo. 2, c. 21, and is now under the superintendence of the conservators of the river Thames, *Thames.*

Thames.

by virtue of the “Thames Conservancy Act, 1857” (20 & 21 Vict. c. cxlvii., s. 52), which transferred to them the powers of the corporation of London as conservators of that river.¹⁴

¹⁴ See *Turnidge v. Shaw*, 30 L. J. (N. S.), M. C. 113; 3 Law T., N. S. 847; 25 J. P. 294. In addition to the bye-laws made by the city corporation on the 4th October, 1785, under the 30 Geo. 2, c. 21, which are still in force, the Thames conservators in January, 1860, made an amended bye-law in lieu of the 16th of those, ordaining that “no person shall use any net for the purpose of catching fish in the river Thames between Richmond bridge and the City stone at Staines, except a small net for the purpose of taking bait only, of the following dimensions, namely, not exceeding thirteen feet in circumference, and an angler’s landing net, under penalty to forfeit and pay five pounds for every such offence.”

CHAPTER XXI.

AS TO SALMON FISHERIES.

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1. *English Salmon Fisheries*, infra.
 2. *Scotch Salmon Fisheries*, p. 327.
 3. *Irish Fisheries*, p. 327.
 4. *Salmon Exportation*, p. 327.
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1. ENGLISH SALMON FISHERIES.

THE law as to salmon fisheries in England was 1. *English salmon fisheries*, consolidated in 1861 by the act 24 & 25 Vict. 109,¹ the provisions of which we propose to give here 24 & 25 Vict. c. 109. entire, the Salmon Exportation Act, 1863, 26 Vict. c. 10. c. 10, being applicable to the United Kingdom, is placed as Sect. 4. The following table may be useful in referring to the several enactments :—

Preliminary.

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2. Application of act..	295	4. Definitions ..	296, 297

¹ Intituled "An Act to amend the Laws relating to Fisheries of Salmon in England." [Royal assent, 6th August, 1861.] There will still be a variety of local acts in force, and, amongst others, the provisions of some of those partially repealed by this act, set out in the latter portion of the schedule, p. 317, will still remain in operation. As to other offences in respect of salmon fisheries in which there are private rights, see Chap. XX. *ante*, pp. 283—292.

24 & 25 Vict.
c. 109.**LAW OF FISHING.*****Prohibition of certain Modes of destroying Fish.***

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WHEREAS the salmon fisheries of England have of Preamble. late years been greatly injured, and for the purpose of increasing the supply of salmon it is expedient to amend the laws relating to fisheries of salmon in England : Be it therefore enacted by the Queen's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, as follows :—

Preliminary.

1. This act may be cited for all purposes as the short title. *Salmon Fishery Act, 1861.*
2. This Act shall not extend to Scotland or Ire- Application of act. land, or to the River Tweed, as defined by the “Tweed Fisheries Amendment Act, 1859.”²

² The acts relating to the River Tweed are the 20 & 21 Vict. c. cxlviii., and the amended act 22 & 23 Vict. c. lxx. here referred to, which defines by ss. 2 and 4 the limits of the river. By s. 23 of the latter also, the River Tweed

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Commencement of act.

Definition of terms.

3. This act shall not come into operation until the 1st day of October, 1861.

4. In this act, unless there is something inconsistent in the context, the words and expressions hereinafter mentioned shall have respectively the meanings hereby assigned to them; that is to say,

“Person” shall include any body of persons, corporate or unincorporate:

“Salmon” shall include all migratory fish of the genus salmon, whether known by the names hereinafter mentioned, that is to say, salmon, cock or kipper, kelt, laurel, girling, grilse, botcher, blue cock, blue pole, fork tail, mort, peal, herring peal, may peal, pugg peal, harvest cock, sea trout, white trout, sewin, bunting, guinaid, tubs, yellow fin, sprod, herling, whiting, bull trout, whitling, scurf, burn tail, fry, samlet, smoult, smelt, skirling or scarling, parr, spawn, pink, last spring, hepper, last brood, gravelling, shed, scad, blue fin, black tip, fingerling, brandling, brondling, or by any other local name:

“Young of Salmon” shall include all young of the salmon species, whether known by the names of fry, samlet, smolt, smelt, skirling or scarling, par, spawn, pink, last spring, hepper, last brood, gravelling, shed, scad, blue fin, black tip, fingerling, brandling, brondling, or by any other name, local or otherwise:

“Court” shall include two or more magistrates assembled in petty sessions:

“Tidal waters” shall include the sea, and all rivers, creeks, streams, and other water as far as the tide flows and reflows:

was not to be exempt from the provisions of any general acts relating to salmon fisheries to be passed. Many of the offences under these acts are punishable in England, as, for instance, the possession in England of unseasonable salmon (s. 10 of 22 & 23 Vict. c. lxx.)

- “Inland waters” shall mean all waters that are 24 & 25 Vict. c. 109.
not tidal waters :
- “Dam” shall mean all weirs and other fixed obstructions used for the purpose of damming up water :
- “Fishing weir” shall mean a dam used for the exclusive purpose of catching or facilitating the catching of fish :
- “Fishing mill dam” shall mean a dam used or intended to be used partly for the purpose of catching or facilitating the catching of fish, and partly for the purpose of supplying water for milling or other purposes :
- “Fixed engine” shall include stake nets, bag nets, putts, putchers, and all fixed implements or engines for catching or for facilitating the catching of fish :
- “Home office” shall mean one of her majesty’s principal secretaries of state.

LAW OF FISHING.

Prohibition of certain Modes of destroying Fish.

5. Every person who causes or knowingly permits to flow, or puts or knowingly permits to be put, into any waters containing salmon, or into any tributaries thereof, any liquid or solid matter to such an extent as to cause the waters to poison or kill fish, shall incur the following penalties;³ (that is to say,) Penalty on mixing poisonous substances in rivers.

- (1.) Upon the first conviction a penalty not exceeding five pounds :
- (2.) Upon the second conviction a penalty not exceeding ten pounds, and a further penalty not exceeding two pounds for every day during which such offence is continued :
- (3.) Upon the third or any subsequent conviction, a penalty not exceeding twenty

³ *Vide a. 35, post, p. 315, as to the recovery of penalties.*

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c. 109.

pounds a day for every day during which such offence is continued, commencing from the date of the third conviction :

But no person shall be subject to the foregoing penalties for any act done in the exercise of any right to which he is by law entitled, if he prove to the satisfaction of the court before whom he is tried that he has used the best practicable means, within a reasonable cost, to render harmless the liquid or solid matter so permitted to flow or to be put into waters ;—but nothing herein contained shall prevent any person from acquiring a legal right in cases where he would have acquired it if this act had not passed, or exempt any person from any punishment to which he would otherwise be subject, or legalize any act or default that would but for this act be deemed to be a nuisance or otherwise be contrary to law.

Power to
have ques-
tion under
preceding
section de-
cided by jury.

6. Where any proceedings are instituted by any complainant against any person for the recovery of any penalties alleged to have been incurred by him under the last preceding section, if such person hereinafter referred to as “the defendant,” on appearing before the justices constituting the court by which he is to be tried in pursuance of this act, alleges by way of defence, that he has used the best practicable means, within a reasonable cost, to render such matter harmless, and proves to the satisfaction of the court that in the event of the complaint being decided against him the expense of permanently preventing the matter complained of would, exclusive of costs, exceed one hundred pounds, and gives security, to be approved by such court, duly to prosecute his appeal and to abide the event thereof, all proceedings before the justices shall be stayed, and it shall be lawful for such complainant to bring an action in one of her majesty’s superior courts of law at Westminster against the defendant ;—and the plaintiff in such action shall deliver to the defendant an issue or issues whereby the question whether he has used the best practicable means, within a rea-

sonable cost, to render such matter harmless may be tried ;—and the form of such issue or issues, in case of dispute, or in the case of nonappearance of the defendant, shall be settled by the court in which the action is brought, and such action shall be prosecuted and issue or issues tried in the same manner and subject to the same incidents in and subject to which actions are prosecuted and issues tried in other cases within the jurisdiction of such court, or as near thereto as circumstances admit.

7. The verdict of the jury on such issue shall, unless the court before which the same is tried orders a new trial, be conclusive as to the questions involved in any subsequent proceedings that may be had for the recovery of any penalties in pursuance of the said section,—and any costs that may have been incurred before the justices by the parties to such action as is mentioned in this section shall be deemed to be costs incurred in such action, and be payable accordingly.

8. No person shall do the following things or any of them ; that is to say,

- (1.) Use any light for the purpose of catching salmon ;
- (2.) Use any spear, gaff, strokehall, snatch, or other like instrument for catching salmon ;
- (3.) Have in his possession a light or any of the foregoing instruments under such circumstances as to satisfy the court before whom he is tried that he intended at the time to catch salmon by means thereof :

And any person acting in contravention of this section shall incur a penalty not exceeding five pounds,⁴ and shall forfeit any instruments used by him or found in his possession in contravention of this section ;—but this section shall not apply to any person using a gaff as auxiliary to angling with a rod and line.

⁴ *Vide s. 35, post, p. 315, for the recovery of penalties.*

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c. 109.

Effect of
issue.

Penalty on
fishing with
lights,
spears, &c.

24 & 25 Vict.
c. 109.

Penalty on
using roe as
a bait.

9. No person shall do the following things or any of them ; that is to say,
- (1.) Use any fish roe for the purpose of fishing ;
 - (2.) Buy, sell, or expose for sale, or have in his possession, any salmon roe ;

And any person acting in contravention of this section shall for each offence incur a penalty not exceeding two pounds,⁵ and shall forfeit all salmon roe found in his possession ; but this section shall not apply to any person who uses or has in his possession salmon roe for artificial propagation or other scientific purposes, or gives any reason satisfactory to the court by whom he is tried for having the same in his possession.

Penalty on
using certain
nets.

10. No person shall take or attempt to take salmon with any net having a mesh of less dimensions than two inches in extension from knot to knot (the measurement to be made on each side of the square), or eight inches measured round each mesh when wet ;—and any person acting in contravention of this section shall forfeit all nets and tackle used by him in so doing, and shall for each offence incur a penalty not exceeding five pounds ;⁵—and the placing two or more nets behind

⁵ *Vide s. 35, post*, p. 315, for the recovery of penalties. The decision in *Thomas v. Evans* (27 L. J. (N. S.) M. C. 172; 31 Law T. 98; 22 J. P. 308), under 1 Eliz. c. 17, now repealed, as to the mode of measurement of nets, is adopted in this section. In *Williams v. Blackwall* (32 L. J. (N. S.) Exch. 174; 8 Law T. (N. S.) 252; 27 J. P. 504), it was held that this section extends to all persons and is not confined to conservators or overseers appointed under s. 33, *post*, p. 314. The catching of fish is permitted only by rod and line. See s. 12 (2), and *Moulton v. Wilby*, 32 L. J. (N. S.) M. C. 164; 8 Law T., N. S. 284; 27 J. P. 536. In the latter case a salmon cage was erected within fifty yards below a mill dam, to which no fish pass was attached ; an ancient right of fishery existed in the salmon cage by charter, grant or immemorial usage : it was held that it contravened the 12th section, which prohibits the catching of salmon, otherwise than by rod and line within fifty yards below any dam, unless the dam has a fish pass ; and that the case was not within the reservation of ancient rights of fishery in this section.

or near to each other in such manner as to practically diminish the mesh of the nets used, or the covering the nets used with canvas, or the using any other artifice so as to evade the provisions of this section with respect to the mesh of nets, shall be deemed to be an act in contravention of this section.

11. No fixed engine of any description shall be placed or used for catching salmon in any inland or tidal waters;—and any engine placed or used in contravention of this section may be taken possession of or destroyed;—and any engine so placed or used, and any salmon taken by such engine, shall be forfeited, and, in addition thereto, the owner of any engine placed or used in contravention of this section shall, for each day of so placing or using the same, incur a penalty not exceeding ten pounds;⁶—and for the purposes of this section a net that is secured by anchors, or otherwise temporarily fixed to the soil, shall be deemed to be a fixed engine,—but this section shall not affect any ancient right or mode of fishing as lawfully exercised at the time of the passing of this act by any person by virtue of any grant or charter or immemorial usage;—provided always, that nothing in this section contained shall be deemed to apply to fishing weirs or fishing mill dams.

12. The following regulations shall be observed with respect to dams:—

(1.) No dam except such fishing weirs and fishing mill dams as are lawfully in use at the time of the passing of this act, by virtue of a grant or charter or immemorial usage, shall be used for the purpose of catching or facilitating the catching of salmon:

1. Any person catching or attempting to catch salmon in contravention of this section shall incur a penalty not exceeding five pounds for each offence,

<sup>24 & 25 Vict.
c. 109.</sup>

<sup>Penalty on
placing or
fixing fixed
engines.</sup>

<sup>Penalty on
using certain
dams for
catching
salmon.</sup>

* See note ⁶, *ante*, p. 300.

24 & 25 Vict.
c. 109.

and a further penalty not exceeding one pound for each salmon which he catches :⁶

2. All traps, nets, and contrivances, used in or in connexion with the dam for the purpose of catching salmon shall be forfeited :
3. All salmon caught in contravention of the above prohibition shall be forfeited :

And no fishing weir, although lawfully in use as aforesaid, shall be used for the purposes of catching salmon unless it have therein such free gap as is hereinafter mentioned ;—and no fishing mill dam, although lawfully in use as aforesaid, shall be used for the purposes of catching salmon unless it have attached thereto a fish pass of such form and dimensions as shall be approved of by the Home Office, nor unless such fish pass has constantly running through it such a flow of water as will enable salmon to pass up and down such pass, but so nevertheless that such pass shall not be larger nor deeper than requisite for the above purposes :

(2.) No person shall catch or attempt to catch, except by rod and line, any salmon in the head race or tail race of any mill, or within fifty yards below any dam, unless such mill or dam has attached thereto a fish pass of such form and dimensions as may be approved by the Home Office, and such fish pass has constantly running through it such a flow of water as will enable salmon to pass up and down it [see s. 11, and case of *Moreton v. Wilby*, note⁶] ; and if any person acts in contravention of the foregoing provision,

1. He shall incur a penalty not exceeding two pounds for each offence, and a further penalty not exceeding one pound for every salmon so caught :⁶

⁶ *Vide* s. 35, post, p. 315, for the recovery of penalties.

2. He shall forfeit all salmon caught in 24 & 25 Vict.
contravention of this section, and all
nets or other instruments used or
placed for catching the same.

13. Where salmon or the young of salmon are led aside out of a main stream by means of any artificial channel used for the purpose of supplying towns with water, or for supplying any navigable canal, the company or persons having the control over such artificial channel shall, within six months after the commencement of this act, put up and shall maintain, at their own costs and charges, a grating or gratings across such channel, for the purpose of preventing the descent of the salmon or the young of salmon ; and such grating or gratings shall be placed in such form and manner as may be approved by one of the inspectors in this act mentioned ;—and any company or persons failing to put a grating or gratings, in cases where they are required to do so by this section, shall incur a penalty not exceeding five pounds for every day after the expiration of such period of six months during which he fails to comply with the provisions of this section ;⁷—and any such company or person failing so to maintain the same shall incur a penalty not exceeding one pound for every day during which such failure continues ;⁷—provided always, that no such grating shall be so placed as to interfere with the passage of boats on any navigable canal.

Prohibition of the Destruction of unseasonable Fish.

14. No person shall do any of the following things ; that is to say,
- (1.) Wilfully take any unclean or unseasonable salmon ;
- (2.) Buy, sell, or expose for sale, or have in his possession, any unclean or unseasonable salmon, or any part thereof :

⁷ *Vide s. 35, post, p. 315, for the recovery of penalties.*

24 & 25 Vict. c. 109. And any person acting in contravention of this section shall incur the following penalties ; that is to say,

- (1.) He shall forfeit any fish taken, bought, sold or exposed for sale, or in his possession ;
- (2.) He shall incur a penalty not exceeding five pounds in respect of each fish taken, sold, or exposed for sale, or in his possession ;⁸

But this section shall not apply—

- (1.) To any person who takes such fish accidentally, and forthwith returns the same to the water with the least possible injury ;
- (2.) To any person who takes or is in possession of such fish for artificial propagation or other scientific purposes.

Penalty on taking the young of salmon.

15. No person shall do the following things or any of them ; that is to say,

 - (1.) Wilfully take or destroy the young of salmon ;
 - (2.) Buy, sell, or expose for sale, or have in his possession the young of salmon ;
 - (3.) Place any device for the purpose of obstructing the passage of the young of salmon ;
 - (4.) Wilfully injure the young of salmon ;
 - (5.) Wilfully disturb any spawning bed, or any bank or shallow on which the spawn of salmon may be :

And any person acting in contravention of this section shall incur the following penalties ;⁸ that is to say,

- (1.) He shall forfeit all the young of salmon found in his possession ;

⁸ *Vide s. 35, post, p. 315*, for the recovery of penalties. See s. 34, *post*, p. 314, as to grant of search warrant. This act contains no authority to condemn the fish taken when it is unfit for human food ; but, by 26 & 27 Vict. c. 117, s. 2, a medical officer of health or an inspector of nuisances may examine and seize any fish, &c. exposed for sale, &c. and if it be unsound, unwholesome or unfit for food to take it before a justice, who may order it to be destroyed or disposed of ; and the owner or possessor of it is liable to a penalty of 20*l.*, or three months' imprisonment.

- (2.) He shall forfeit all rods, lines, nets, devices, 24 & 25 Vict.
and instruments used in committing any of
the above offences ;
(3.) He shall for each offence pay a penalty not
exceeding five pounds :

But nothing herein contained shall apply to any person who may have obtained such young of salmon for artificial propagation or other scientific purposes, and nothing herein contained shall prejudice the legal right of any owner to take materials from any stream.

16. If any person wilfully disturbs or attempts to catch salmon when spawning, or when on or near their spawning beds, he shall for each offence incur a penalty not exceeding five pounds ;⁸—but this section shall not apply to any person who may catch or attempt to catch salmon for the purposes of artificial propagation or other scientific purposes.

Penalty on
disturbing
fish when
spawning.

Restrictions as to Times of Fishing.

17. No person shall fish for, catch, or attempt to close time. catch, or kill salmon between the days hereinafter mentioned (which interval is herein referred to as the close season); that is to say, between the 1st day of September and the 1st day of February following, both inclusive, except only that it shall be lawful to fish with a rod and line between the 1st day of September and the 1st day of November following, both inclusive;—and any person acting in contravention of this section shall forfeit any salmon caught by him, and shall in addition thereto incur a penalty not exceeding five pounds, and a further penalty not exceeding two pounds in respect of each salmon so caught.⁸

18. The Home Office may, upon the application of the justices in quarter sessions assembled of any county abutting on water containing salmon, ex-

Power of
Home Office
to extend or
vary close
season.

⁸ *Vide, s. 35, post, p. 315, for the recovery of penalties.*

24 & 25 Vict. tend or vary the time during which it is prohibited
 c. 100. to take salmon in such waters;—any such application shall be forwarded to the Home Office by the chairman of such justices, but it shall not be entertained by the Home Office until due proof is given that notice of such application has been served on the clerk of the peace of every county abutting on such river other than the county from the justices of which the application proceeds, and that a copy of such notice has been published in every county abutting on such river by advertisement once at least in each of four successive weeks in some local newspaper;—the extension of such time as aforesaid by the Home Office shall be made by order under the hand of one of her Majesty's principal secretaries of state, and a copy of the *London Gazette* containing such order shall be evidence of the same having been made.

For the purposes of this section any riding or other division of a county having a separate court of quarter sessions shall be deemed a separate county,—and any penalties imposed by this act for the purpose of prohibiting the killing of fish during the close time shall apply to such extended close time;—and the Home Office may from time to time vary the close time so extended.

Penalty on
 selling fish
 during close
 time.

19. No person shall buy, sell, or expose for sale, or have in his possession for sale, any salmon between the 3rd day of September and the 2nd day of February following;—and any person acting in contravention of this act shall forfeit any fish so bought, sold, or exposed for sale, or in his possession for sale, and shall incur a penalty not exceeding two pounds for each such fish;⁸—but this section shall not apply to any person buying, selling, or exposing for sale, or having in his possession for sale, salmon cured, pickled or dried, or any fresh salmon caught beyond the limits of this act,—nevertheless the burden of proving any fresh

* *Vide s. 35, post, p. 315, for the recovery of penalties.*

salmon that is sold or exposed, or in the possession ^{24 & 25 Vict.}
 of any person for sale between the 3rd day of September
 and the 2nd day of February to have been caught beyond the limits of this act shall lie on the person selling or exposing the same for sale, or having the same in his possession for sale.⁹

20. The proprietor or occupier of every fishery for salmon, shall, within thirty-six hours after the commencement of the close season, cause to be removed and carried away from the waters within his fishery the inscales, hecks, tops, and rails of all cruives, boxes, or cribs, and all planks and temporary fixtures used for taking or killing salmon, and all other obstructions to the free passage of fish in or through the cruives, cribs, and boxes within his fishery ;—and if any proprietor or occupier omits to remove and carry away in manner aforesaid any things hereby required to be removed and carried away he shall incur the following penalties ; that is to say,

- (1.) He shall forfeit all the engines or other things that are not removed and carried away in compliance with this section ;
- (2.) He shall, for every day during which he suffers such things to remain unremoved beyond the period prescribed by this act, pay a sum not exceeding ten pounds.¹⁰

21. No person shall fish for, catch, or kill by any means other than a rod and line, any salmon between the hour of twelve of the clock at noon on Saturday and the hour of six of the clock on Mon-

^{c. 109.}

^{Removal of fixed engines during close time.}

⁹ The limits of the act are England and Wales. See s. 2, *ante*, p. 295 ; and, therefore, this provision shows that the act does not apply to fish caught elsewhere. It is similar to provisions in the Tweed Fisheries Acts, and is an enactment necessary in reference to dealing in game. See *ante*, p. 139, note.

¹⁰ See s. 35, *post*, p. 315, for the recovery of penalties. See *Hodgson v. Little*, 8 Law T., N. S. 358, as to what is a free passage under this enactment.

24 & 25 Vict. day morning ;—and any person acting in contravention of this section shall forfeit all fish taken by him, and any net or moveable instrument used by him in taking the same, and in addition thereto shall incur a penalty not exceeding five pounds, and a further penalty not exceeding one pound in respect of each fish so taken between twelve of the clock at noon on Saturday and six of the clock on Monday morning ;¹¹—but nothing in this section contained shall compel the owner of any putts or putchers to remove or draw up the same during such time as is mentioned in this section, or subject him to a penalty, so that he lets down a net in such manner or uses such other device as the Home Office approves for the purpose of preventing salmon passing into the putts or putchers during such time as aforesaid.

A free passage to be left through cribs or traps during weekly close time.

22. The proprietor or occupier of every fishery shall, between twelve of the clock at noon on Saturday and six of the clock on the Monday morning following, maintain a clear opening, of not less than four feet in width from the bottom to the top, through all cribs, boxes, or cruives used for taking salmon within his fishery, so that a free space of that width is effectually secured for the passage of fish up and down through each box, crib, or cruive, whether used for the purpose of fishing or not ;—and shall, for the purpose of maintaining such opening, remove the inscales and rails of all such boxes, cribs, or cruives ;—and any person acting in contravention of this section shall incur the following penalties :¹¹

- (1.) He shall for each offence pay a sum not exceeding five pounds, and a further penalty not exceeding one pound for each fish so taken ;
- (2.) He shall forfeit every fish caught in contravention of this section.

¹¹ See s. 35, post, p. 315, for the recovery of penalties.

*Fish Passes.*24 & 25 Vict.
c. 109.

23. Any proprietor of a fishery with the written consent of the Home Office may attach to every dam existing at the time of the passing of this act a fish pass, of such form and dimensions as the Home Office may approve, so that no injury be done to the milling power or to the supply of water to or of any navigable river, canal, or other inland navigation by such fish pass;—and any person obstructing any person legally authorized in erecting or doing any necessary act to erect or maintain such fish pass shall incur a penalty not exceeding ten pounds for each act of obstruction;¹²—and any person injuring such fish pass shall pay the expense of repairing the injury, such expense to be recovered in a summary manner, and, in addition thereto, if such injury is wilful, shall incur a penalty not exceeding five pounds;¹²—and any person doing any act for the purpose of preventing salmon from passing through a fish pass, or taking any salmon in its passage through the same, shall incur a penalty not exceeding five pounds for a first offence, and not exceeding ten pounds for each subsequent offence, and shall forfeit any salmon taken by him in contravention of this section, and any instrument used by him in taking the same:¹²—provided that, if any injury is done to any dam by reason of the affixing of a fish pass in pursuance of this section, any person sustaining any loss thereby may recover compensation for such injury in a summary manner¹² from the person or body of persons by whom such fish pass has been affixed.

24. The Home Office shall not give their consent to the attachment by a proprietor of a fish pass to any dam, in pursuance of the last preceding section,

Notice required before
Home Office gives con-
sent.

¹² *Vide*, s. 35, *post*, p. 315, for the recovery of penalties, and also these and other expenses, &c. directed by the act are to be recovered in a summary manner.

24 & 25 Vict. unless such proprietor proves, to the satisfaction of
c. 109. the Home Office, that he has served notice on the owner of such dam of his intention to apply for such consent, and at the same time has furnished him with plan and specification of the fish pass which he proposes to erect, a reasonable time before his application;—and it shall be lawful for such owner to urge any objections he may think fit to the Home Office against their giving their consent, and the Home Office shall take objections so made into consideration before they give their consent to the attachment of the fish pass.

Fish passes
to be attached
to future
dams.

25. Every person who, after the passing of this act, in waters where salmon are found, constructs a new dam, or raises or alters, so as to create increased obstruction to fish, a dam already constructed, shall attach and maintain attached thereto in an efficient state a fish pass of such form and dimensions as may be determined by the Home Office, and if he do not, such person shall incur a penalty not exceeding five pounds;¹⁴—and it shall be lawful for the Home Office to cause to be done any work by this section required to be done by such person, and to recover the expense of doing the same in a summary manner from the person in default;¹⁴—but this section shall not authorize anything to be done which may injuriously affect any navigable river, canal or inland navigation, nor shall anything in this or the last preceding section prevent any person from removing a fish pass for the purpose of repairing or altering a dam, so that within a reasonable time he restore such fish pass in as an efficient a state as it was before he removed the same.

Supply of
water to fish
passes.

26. Where a fish pass is attached to any dam in pursuance of this act, the sluices, if any, for drawing off the water which would otherwise flow over the dam shall be kept shut at all times when the water is not required for milling purposes in such

¹⁴ *Vide note 13, ante, p. 309.*

manner as to cause such water to flow through the 24 & 25 Vict. fish pass ;—and any person making default in complying with the requisitions of this section shall incur a penalty not exceeding five shillings per hour for every hour during which such default continues ;¹⁴—but this section shall not preclude any person from opening a sluice for the purpose of letting off water in cases of flood, or for milling purposes, or when necessary for the purposes of navigation, or for cleansing or repairing any dam or mill, or the appurtenances thereof.

c. 109.

Restrictions as to Fishing Weirs.

27. Where any fishing weir extends more than ^{construction of free gaps.} half-way across any stream at its lowest state of water, it shall have a free gap or opening in accordance with the regulations following, unless otherwise authorized by the Home Office, under the powers of this act ; that is to say,

- (1.) The free gap shall be situate in the deepest part of the stream between the points where it is intercepted by the weir ;
- (2.) The sides of the gap shall be in a line with and parallel to the direction of the stream at the weir ;
- (3.) The bottom of the gap shall be level with the natural bed of the stream above and below the gap ;
- (4.) The width of the gap in its narrowest part shall be not less than one tenth part of the width of the stream :—provided always, that such gap shall not be required to be wider than forty feet, and shall not in any case be narrower than three feet.

28. The following rules shall be observed for the ^{Enforcing} purpose of enforcing efficient free gaps in fishing ^{free gaps in} weirs ; that is to say, ^{fishing weirs.}

- (1.) Where a weir is without a legal free gap at

¹⁴ *Vide note* ¹⁵, *ante*, p. 309.

24 & 25 Vict.
c. 109.

the time of the commencement of this act, the owner of such weir shall within twelve months after the commencement of this act make such a gap,—and if he does not, he shall incur a penalty not exceeding five pounds for every day after the expiration of such period of twelve months during which he does not make such gap;¹⁵

- (2.) Where a free gap has been made in a weir, but the same is not maintained in accordance with this act, the owner of such weir shall incur a penalty not exceeding one pound a day for each day he is in default;¹⁵
- (3.) No alteration shall be made in the bed of any river in such manner as to reduce the flow of water through a free gap; if it is, the person making the same shall incur a penalty not exceeding five pounds, and a further penalty of one pound a day until he restores the bed of the river to its original state;¹⁵
- (4.) No person shall place any obstruction, use any contrivance, or do any act whereby fish may be scared, deterred, or in any way prevented from freely entering and passing up and down a free gap at all periods of the year;—and any person placing any obstruction, using any contrivance, or doing any act in contravention of the regulations lastly hereinbefore contained shall incur a penalty not exceeding five pounds for the first offence, and not exceeding ten pounds for each subsequent offence;¹⁵—but this last regulation shall not apply to a temporary bridge or board used for crossing the free gap, and taken away immediately when a person has crossed the same.

¹⁵ *Vide* s. 35, post, p. 315, for the recovery of this penalty.

29. The following rules shall be observed in relation to the construction of boxes and cribs in fishing weirs and fishing mill dams; that is to say,

- (1.) The upper surface of the sill shall be level with the bed of the river;
- (2.) The bars or inscales of the heck or upstream side of the box or crib shall not be nearer each other than two inches, and shall be capable of being removed and shall be placed perpendicularly;

And the owner of any fishing weir or fishing mill dam that has attached thereto any box or crib in contravention of this act shall bring the same into conformity with this act within six months after the commencement of this act;—and he shall incur a penalty not exceeding five pounds for every day after the expiration of such period of six months during which he fails to comply with the provisions of this section; and any owner failing so to maintain the same shall incur a penalty not exceeding one pound for every day during which such failure continues.¹⁶

30. There shall not be attached to any box or crib in any fishing weir or fishing mill dam any spur or tail wall, leader or outrigger, of a greater length than twenty feet from the upper or lower side of such box or crib;—and if any box or crib in any fishing weir or fishing mill dam has any walls, leaders or outriggers, in contravention of this section, the owner of the weir or fishing mill dam shall incur a penalty not exceeding one pound for every day during the continuance thereof.¹⁶

CENTRAL AUTHORITY.

31. The general superintendence of the salmon fisheries throughout England shall be vested in the Home Office,¹⁷ and it shall be lawful for the Home

General
superintend-
ence of
fisheries by
Home Office.

¹⁶ *Vide s. 35, post*, p. 315, for the recovery of penalties.

¹⁷ The “Home Office” is, by s. 4, *ante*, p. 297, to “mean one of her majesty’s principal secretaries of state.”

24 & 25 Vict. c. 109. Office to appoint two inspectors of fisheries for three years, to assign to them their duties, and to pay to them such salaries as may from time to time be determined by the commissioners of her majesty's treasury.

The Home Office may from time to time remove the said inspectors, and appoint other persons in their stead.

Annual reports of inspectors to be laid before parliament.

32. The Home Office shall annually lay before parliament reports from the inspectors, which reports shall contain as far as may be practicable a statistical account of the fisheries, with such other information as may be collected, and suggestions offered for their regulation and improvement.

Justices at sessions to appoint conservators of rivers.

33. It shall be lawful for the justices of the peace assembled at any general or quarter sessions of the peace from time to time to appoint conservators or overseers for the preservation of salmon, and enforcing for that purpose the provisions of this act within the limits of the jurisdiction of such justices.

Justice may grant a warrant to enter suspected places.

34. It shall be lawful for any justice of the peace, upon an information on oath that there is probable cause to suspect any breach of the provisions of this act to have been committed on any premises, or any salmon illegally taken or any illegal nets or other engines to be concealed on any premises, by warrant under his hand and seal, to authorize and empower any inspector, water bailiff, conservator, constable or police officer to enter such premises for the purposes of detecting such offence, or such concealed fish, at such time or times, in the day or night, as in such warrant may be mentioned, and to seize all illegal engines, or any salmon illegally taken, that may be found on such premises¹⁸ ;—

¹⁸ This does not authorize the apprehension of the offending party, as is usual in search warrants for stolen goods, and he must be summoned in the usual way for the offences in ss. 8, 10, 14 or 15, *ante*, pp. 299, 300, 303, 304, as the case may be. There is no power given in this act to condemn the fish seized under the warrant if it is unfit for food, but see 26 & 27 Vict. c. 117, s. 2, mentioned in note ⁴, *ante*, p. 304.

provided that no such warrant shall continue in 24 & 25 Vict. force for more than one week from the date c. 109. thereof.

LEGAL PROCEEDINGS.

35. All penalties imposed by this act, and all Recovery of costs or expenses by this act directed to be recovered penalties and in a summary manner,¹⁹ may be recovered, within six months after the commission of the offence, before two justices, in manner directed by an act passed in the eleventh and twelfth years of the 11 & 12 Vict. reign of her present majesty Queen Victoria, chapter c. 43, intituled "An Act to facilitate the Performance of the Duties of the Justices of the Peace out of Sessions within England and Wales, with respect to Summary Convictions and Orders," or of any act amending the same;²⁰—and all monies

¹⁹ Expenses are directed to be recovered in a summary manner by s. 23, *ante*, p. 309, and s. 25, *ante*, p. 310. The justices make an order in these cases, and the procedure is similar to that for penalties referred to in note ²⁰, *infra*.

²⁰ The 11 & 12 Vict. c. 43, is now the act regulating summary proceedings before justices, under which it is sufficient if the information or complaint be preferred within six months after the offence or matter arose, but here the penalty or expenses must be recovered, *i. e.*, that the conviction or order must be made within that period (Oke's "Synopsis," 8th ed., p. 97). In the case of a penalty, the justice receiving the information may issue to the defendant a summons, or warrant in the first instance if the offence is substantiated on oath; but in the case of a complaint for the recovery of expenses, a warrant can only be issued on disobedience of the summons (11 & 12 Vict. c. 43, ss. 1, 2). Defendants may be bailed (s. 16). Witnesses may be summoned (s. 7). The hearing must be in open court (s. 12), and may be *ex parte* on proof of service of the summons (s. 13), or, if the informant do not appear, the information or complaint may be dismissed with costs (s. 14). The informer is a competent witness where there is a penalty, but not the defendant; but in cases of recovery of expenses alone, both parties are competent witnesses. Costs may be awarded to be paid by the defendant (s. 18). The conviction will be in the form I 1, and the order as K 1, in the schedule to 11 & 12 Vict. c. 43. The amount adjudged will be recovered by distress of the defend-

24 & 25 Vict. received in respect of penalties recovered under the c. 100. act shall be paid as follows ; that is to say,

Such portion not exceeding one-half, as the court may think fit, to the person on whose complaint the penalty is recovered, and the remainder in manner directed by the said act of eleventh and twelfth years of the reign of her present majesty Victoria, chapter forty-three;²¹—and all forfeitures shall be disposed of as the court may direct, and the proceeds, if any, shall be applied in manner in which the monies received in respect of penalties are hereby directed to be applied.

Offences on rivers may be tried in county on either side.

Offences committed on sea coast where to be tried.

Saving clause for dredging.

36. Where any offence under this act is committed in or upon any waters forming the boundary between any two counties, districts of quarter sessions or petty sessions, such offence may be prosecuted before any justice or justices of the peace in either of such counties or districts.

37. Any offence committed under this act, on the sea coast or at sea, beyond the ordinary jurisdiction of any justice of the peace, shall be deemed to have been committed within the body of any county abutting on such sea coast or adjoining such sea, and may be tried and punished accordingly.

38. Nothing in this act contained shall prejudice the legal right of any conservators, directors, com-

ant's goods (s. 19), and in default thereof, imprisonment without hard labour for not exceeding three calendar months, unless sooner paid (s. 22 ; 21 & 22 Vict. c. 73, s. 5). There is no appeal against the justices' decision, except to a superior court under the 20 & 21 Vict. c. 43, on a point of law, which right is allowed to either party (*ante*, pp. 154, 155). An appeal was permitted to the quarter sessions, in certain cases, by one of the repealed acts, 58 Geo. 3, c. 43, s. 12. The whole practice in these proceedings is contained in Oke's "Synopsis," 8th ed. pp. 91—190. *Vide Forms of Statements of Offences under this act, post*, pp. 321—326.

²¹ The portion of the penalty not paid to the complainant will be payable under the 11 & 12 Vict. c. 43, s. 31, to the treasurer of the county or city, &c. in which the offence was committed ; and this duty devolves on the justices' clerk.

missioners, undertakers, persons, or body of persons ^{24 & 25 Vict.}
corporate or unincorporate to dredge, scour, cleanse ^{c. 109.}
or improve any navigable river, canal, or other in-
land navigation.

REPEAL OF ACTS.

39. From and after the commencement of this Repeal of
act there shall be hereby repealed the several acts ^{acts.}
and parts of acts set forth in the schedule hereto, to
the extent to which such acts or parts of acts are
therein expressed to be repealed:—provided that
such repeal shall not affect—

- (1.) Any security duly given before this act comes
into operation;
 - (2.) Anything duly done before this act comes
into operation;
 - (3.) Any liability accruing before this act comes
into operation;
 - (4.) Any penalty, forfeiture, or other punishment
incurred or to be incurred in respect of any
offence committed before this act comes
into operation;
 - (5.) The institution of any legal proceeding or
any other remedy for ascertaining, en-
forcing, or recovering any such liability,
penalty, forfeiture, or punishment as afore-
said.
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SCHEDEULE.

Reference to Act.	Title of Act.	Extent of Repeal.
13 Ed. 1, stat. 1, c. 47.—	A penalty for taking of salmon at certain times of the year	<i>The whole act.</i>
25 Ed. 3, stat. 4, c. 4.—“ New weirs shall be pulled down and not repaired” .. ..	.. ..	<i>The whole act.</i>
45 Ed. 3, c. 2.—	The penalty of him that setteth up or enhanceth weirs	<i>The whole act.</i>
13 Rich. 2, stat. 1, c. 19.—A confirmation of stat. 13 Ed. 1, stat. 1, c. 47	.. ..	<i>The whole act.</i>

<i>24 & 25 Vict. Reference to Act.</i>	<i>Title of Act.</i>	<i>Extent of Repeal.</i>
c. 100.	17 Rich. 2, c. 9.—Justices of peace shall be conservators of the statutes made touching salmon	<i>The whole act.</i>
1 Hen. 4, c. 12.	—A confirmation of former statutes touching pulling down of wears	.. .. <i>The whole act.</i>
4 Hen. 4, c. 11.	—Commissions shall be awarded to justices, &c. to inquire of wears and kideis, &c.	.. <i>The whole act.</i>
2 Hen. 6, c. 15.	—No man shall fasten nets to anything over rivers	.. .. .. .. <i>The whole act.</i>
12 Ed. 4, c. 7.	—An act for the taking away wears and fishgarthes	.. .. .. .. <i>The whole act.</i>
11 Hen. 7, c. 5.	—Every man may pull down the wears and engines in the haven of Southampton, &c.	<i>The whole act.</i>
14 & 15 Hen. 8, c. 13.	—A confirmation of the statute 11 Hen. 7, c. 5, and the same made perpetual.	<i>The whole act.</i>
23 Hen. 8, c. 18.	—For pulling down piles and fishgarthes in the rivers Ouse and Humber	.. <i>The whole act.</i>
1 Eliz. c. 17.	—An act for the preservation of spawn and fry of fish	.. .. <i>In so far as relates to salmon.</i>
3 Jas. 1, c. 12.	—An act for the better preservation of sea fish.	<i>The whole act.</i>
3 Car. 1, c. 4.	—An act for continuance and repeal of divers statutes	<i>The first section of the act.</i>
30 Car. 2, c. 9.	—An act for the better preservation of fishing in the river of Severn	.. .. <i>The whole act.</i>
4 Ann. c. 21.	—An act for the increase and better preservation of salmon and other fish in the rivers within the counties of Southampton and Wiltshire.	<i>The whole act.</i>
9 Ann. c. 26.	—An act for the better preservation and improvement of fishery within the river of Thames, and for regulating and governing the company of fishermen of the said river..	<i>The second section of the act.</i>
1 Geo. 1, stat. 2, c. 18.	—An act for the better preventing fresh fish taken by foreigners being imported into this kingdom, and for the preservation of the fry of fish, and for the giving leave to import lobsters and turbot in foreign bottoms, and for the better preservation of salmon within several rivers in that part of this kingdom called England.	<i>Sects. 11 to 16 inclusive.</i>

<i>Reference to Act.</i>	<i>Title of Act.</i>	<i>Extent of Repeal.</i> 24 & 25 Vict. c. 109.
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23 Geo. 2, c. 26.—An act to continue several laws for the better regulation of pilots for the conducting of ships and vessels from Dover, Deal and Isle of Thanet up the river of Thames and Medway ; and for permitting rum or spirits of the British sugar plantations to be landed before the duties of excise are paid thereon ; and to continue and amend an act for preventing frauds on the admeasurement of coals within the city and liberty of Westminster and several parishes near thereunto ; and to continue several laws for preventing exactions of occupiers of locks and wears upon the river Thames westward, and for ascertaining the rates of water carriage upon the said river ; and for the better regulation and government of seamen in the merchants' service ; and also to amend so much of an act made in the first year of the reign of King George the First as relates to the better preservation of salmon in the river Ribble ; and to regulate fees in trials at assizes and nisi prius upon records issuing out of the office of pleas of the Court of Exchequer ; and for the apprehending of persons in any county or place upon warrant granted by justices of the peace in any other county or place ; and to repeal so much of an act made in the twelfth year of the reign of King Charles the Second as relates to the time during which the office of excise is to be kept open each day, and to appoint for how long time the same shall be kept open upon each day for the future ; and to prevent the dealing or destroying of turnips ; and to amend an act made in the second year of his present majesty for better regulation of attorneys and solicitors.

Sects. 7, 8 & 9

33 Geo. 2, c. 27.—An act to repeal so much of an act passed in the twenty-ninth year of his present majesty's reign concerning a free market for fish at Westminster as requires fishermen to enter their fishing vessels at the office of the searcher of the customs at Gravesend, and to regulate the sale of fish at the first hand in the fish markets in London and Westminster, and to prevent salesmen of fish buying fish to sell again on their own account, and to allow biet and turbot, brill and pear, although under the respective dimensions mentioned in a former act, to be imported and sold, and to punish any persons who shall take or sell any spawn, brood or fry of fish, unsizable fish, or fish out of season, or smelts under the size of five inches, and for other purposes.

Sect. 13.

<i>24 & 25 Vict. c. 109.</i>	<i>Reference to Act.</i>	<i>Title of Act.</i>	<i>Extent of Repeal.</i>
	18 Geo. 3, c. 33.	An act for the better preservation of fish, and regulating the fisheries in the rivers Severn and Verniew ..	<i>In so far as it relates to salmon.</i>
37 Geo. 3, c. 95.	—An act to amend two acts made in the fourth year of the reign of Queen Anne and the first year of the reign of King George the First, for the preservation of salmon and other fish in the rivers within the counties of Southampton and Wilts.		
			<i>In so far as it relates to salmon.</i>
58 Geo. 3, c. 43.	—An act for preventing the destruction of the breed of salmon and fish of salmon kind in the rivers of England ..	.. .. ..	<i>The whole act.</i>
6 & 7 Vict. c. 33.	—An act to repeal so much of an act of the first year of King George the First as limits the time for taking and being restrained from taking salmon in certain rivers, and to amend and extend the provisions of an act of the fifty-eighth year of King George the Third to the rivers therein mentioned .. .. ..	.. .. ..	<i>The whole act.</i>
11 & 22 Vict. c. 52.	—An act to explain the acts for preventing the destruction of the breed of salmon and fish of the salmon kind ..	.. .. ..	<i>The whole act.</i>

Private Acts relating to Salmon Fisheries.

	<i>Rivers affected.</i>	<i>Extent of Repeal.</i>
43 Geo. 3, c. 61.	Teign, Dart and Plym, Devon.	<i>The whole act.</i>
44 Geo. 3, c. 45.	Rivers flowing into the Solway Firth.	<i>The whole act, except in so far as it relates to Scotland, and to fish other than salmon in England.</i>
45 Geo. 3, c. 33.	Carmarthenshire rivers ..	<i>The whole act.</i>
46 Geo. 3, c. 19.	Rivers running into Milford Harbour.	<i>In so far as it relates to salmon.</i>
49 Geo. 3, c. 2.	Lord Lonsdale's fisheries in Derwent.	<i>The whole act.</i>
5 & 6 Vict. c. 63.	Tyne	<i>The whole act.</i>
21 & 22 Vict. c. 141.	Tees.	<i>So much of sects. 63 & 64 as relates to the making of bye-laws for the regulation of salmon fisheries.</i>



FOR M S.²²

24 & 25 Vict.

c. 109.

For that you [or he the said A. B.] on the — day ^{99.} Mixing
of —, at the parish of — in the said county, un-^{poisonous}
lawfully did cause [or put, or unlawfully and knowingly ^{substances in}
did permit to flow, or to be put] into certain waters there (Id. s. 5.)
called —, containing salmon,

[or into the tributaries of certain waters, &c.]
certain liquid [or solid matter called —], to such an ex-
tent as to cause the said waters to poison and kill fish, con-
trary to section 5 of “The Salmon Fishery Act, 1861.”

For that you [or he the said A. B.] on &c., at &c., un-^{100.} Fishing
lawfully did use a certain light, to wit, —, for the pur-^{with lights,}
pose of [or a certain spear, or gaff, or strokehall, or snatch, (Id. s. 8.)
or instrument, for] catching salmon in certain waters there
called —,

[or had in your or his possession there a certain light,
or —, under such circumstances as to satisfy
the said justices that he then intended to catch
salmon by means thereof],
contrary, &c. [as No. 99].

For that you [or he the said A. B.] on &c., at &c., un-^{101.} Using
lawfully did use a certain fish roe for the purpose of fishing ^{roe as a bait.} (Id. s. 9.)
there in certain waters called —,

[or buy, or sell, or expose for sale, or have in your or
his possession there, certain salmon roe],
contrary, &c. [as No. 99].

For that you [or he the said A. B.] on &c., at &c., un-^{102.} Using
lawfully did take [or attempt to take] salmon in certain ^{improper}
waters there called —, with a certain net having a mesh ^{nets.} (Id. s. 10.)
of less dimensions than two inches in extension from knot
to knot (measured on each side of the square), or eight
inches measured round each mesh when wet, contrary, &c.
[as No. 99].

For that you [or he the said A. B.] on &c., at &c., were ^{103.} Owner
[or was] then the owner of a certain fixed engine, to wit, ^{using fixed}
a —, which was then unlawfully placed [or used] for ^{engines.} (Id. s. 11.)
catching salmon in certain inland [or tidal] waters there

²² These Forms of Statements of Offences are for use in filling up the General Forms in 11 & 12 Vict. c. 43, referred to note ¹⁰, ante, p. 315.

24 & 25 Vict. called ——, and the same engine was then so placed [or used] c. 109. there for —— days thereafter, contrary, &c. [*as No. 99*].

104. Using improper dams for catching salmon. (Id. s. 12.)

For that you [or he the said A. B.] on &c., unlawfully did catch ten [or attempt to catch] salmon there in certain waters called ——, with a certain dam, the same not being a dam lawfully in use at the time of the passing of “The Salmon Fishery Act, 1861,” contrary to section 12 of the same act.

105. Catching salmon near mill dam. (Id.)

For that you [or he the said A. B.] on &c., unlawfully did catch [or attempt to catch] otherwise than by rod and line, certain salmon, to wit, [ten] salmon in the head [or tail] race of a certain mill there, [or within fifty yards below a certain dam there], the said mill [or dam] not having attached thereto a fish pass approved by the Home Office, with a sufficient flow of water running through it as would then enable salmon to pass up and down it, contrary, &c. [*as No. 99*].

106. Taking or selling, &c. unclean fish. (Id. s. 14.)

For that you [or he the said A. B.] on &c., unlawfully and wilfully did take from certain waters there called ——, [or unlawfully did buy, or sell, or expose for sale, or have in your or his possession there], certain unclean [or unseasonable] salmon, to wit, [ten] ——, contrary, &c. [*as No. 99*].

107. Taking the young of salmon. (Id. s. 15.)

For that you [or he the said A. B.] on &c., unlawfully and wilfully did take [or destroy] the young of salmon, to wit, [ten] ——, there in certain waters called ——, [or unlawfully did buy, or sell, or expose for sale, or have in your or his possession there, the young of salmon, to wit, ten ——], [or unlawfully did place a certain device called ——, for the purpose of obstructing the passage of the young of salmon there in certain waters called ——], [or unlawfully and wilfully did injure divers young of salmon in certain waters there called ——], [or unlawfully and wilfully did disturb a certain spawning bed, or bank, or shallow, there, on which the spawn of salmon then was], contrary, &c. [*as No. 99*].

For that you [or he the said A. B.] on &c., at &c., un- 24 & 25 Vict.
lawfully and wilfully did disturb [or attempt to catch] in c. 109.
certain waters there called —, certain salmon when 108. Disturb-
spawning [or when on or near their spawning beds] there, spawning,
contrary, &c. [as No. 99]. (Id. s. 16.)

For that you [or he the said A. B.] on &c., at &c., un- 109. Fishing
lawfully did fish for [or catch, or attempt to catch, or kill], in close time.
[otherwise than with a rod and line], certain salmon, to (Id. s. 17.)
wit, [ten] salmon, in certain waters there called —, the
last-mentioned day being during the interval called the
close season, between the first day of September and the
first day of — following, contrary, &c. [as No. 99].

For that you [or he the said A. B.] on &c., at &c., un- 110. Selling
lawfully did buy [or sell, or expose for sale, or have in fish during
your or his possession there for sale] ten salmon, the said close time.
last-mentioned day being between the third day of Septem- (Id. s. 19.)
ber and the second day of February following, contrary, &c.
[as No. 99].

For that you [or he the said A. B.] on &c., at &c., being 111. Owner
then the proprietor [or occupier] of a certain fishery for not removing
salmon there, called —, unlawfully, within thirty-six fixed engines
hours after the commencement of the close season, did during close
omit to remove and carry away, from the waters within the time.
the said fishery, the inscales [or hecks, or tops, or rails] of the (Id. s. 20.)
cruives [boxes and cribs], and all planks and temporary
fixtures used for taking [or killing] salmon, and all other
obstructions to the free passage of fish in or through the
cruives [cribs and boxes] within the said fishery; and you
have [or he the said A. B. has] suffered the said things to
remain unremoved for — days thereafter, contrary, &c.
[as No. 99].

For that you [or he the said A. B.] on &c., about the 112. Fishing
hour of — o'clock in the —, at &c., unlawfully did during
fish for [or catch, or kill], otherwise than by a rod and weekly close
line, [ten] salmon in certain waters there called —, the time. (Id. s. 21.)
same day and hour being between the hour of twelve of
the clock at noon on Saturday and the hour of six of the
clock on Monday morning, contrary, &c. [as No. 99].

For that you [or he the said A. B.] on &c., at &c., being 113. Not
then the proprietor [or occupier] of a certain fishery for leaving pas-
salmon there called —, unlawfully did not, between sage through
cribs or traps

- 24 & 25 Vict. c. 109. twelve of the clock at noon on Saturday and six of the clock on the Monday morning following, remove the inner scales and rails of the boxes [cribs and cruives] used for taking salmon within the said fishery, and did not maintain and effectually secure a clear opening of not less than four feet in width from the bottom to the top, through the said cribs [boxes and cruives] for the passage of fish up and down through the same boxes [cribs or cruives], and [ten] salmon were unlawfully taken by means thereof, contrary, &c. [as No. 99].
- (Id. s. 22.)
114. Obstructing person in erecting a fish pass. (Id. s. 23.) For that you [or he the said A. B.] on &c., at &c., unlawfully did obstruct one C. D. legally authorized in that behalf, and then erecting [or doing a necessary act to erect or maintain] a certain fish pass intended to be attached lawfully to a certain dam in a certain fishery for salmon there, called —, the property of E. F., contrary, &c. [as No. 99].
115. Wilfully injuring a fish pass. (Id.) For that you [or he the said A. B.] on &c., at &c., unlawfully [and wilfully] did injure a certain fish pass then lawfully attached to a certain dam in a certain fishery for salmon there, called —, the property of E. F., the expense of repairing the said injury amounting to the sum of —, contrary, &c. [as No. 99].
116. Preventing salmon passing through a fish pass. (Id.) For that you [or he the said A. B.] on &c., at &c., unlawfully did [state the act done], for the purpose of preventing salmon from passing [or of taking salmon in its passage] through a certain fish pass then lawfully attached to a certain dam in a certain fishery for salmon there, called —, the property of E. F., contrary, &c. [as No. 99.]
117. Not attaching fish pass to future dams. (Id. s. 25.) For that you [or he the said A. B.] on &c., at &c., having, after the passing of "The Salmon Fisheries Act, 1861," in certain waters there, called —, where salmon are found, constructed a new dam [or raised, or altered, so as to create increased obstructions to fish, a dam before then constructed], unlawfully did not attach and maintain attached thereto in an efficient state a fish pass of such form and dimensions as was determined by the Home Office, contrary, &c. [as No. 99.]
118. Not supplying water to fish pass. (Id. s. 26.) For that you [or he the said A. B.] on &c., at &c., in a certain fishery for salmon there, called —, the property of E. F., unlawfully did make default and did not

keep shut the sluices for drawing off the water which would 24 & 25 Vict. otherwise flow over a certain dam in the said fishery, (to c. 109.
which dam was then attached a certain fish pass in pursuance of "The Salmon Fishery Act, 1861,") in such manner as to cause the said water, which was not then required for milling purposes, to flow through the said fish pass, contrary, &c. [as No. 99.]

For that you [*or he* the said A. B.] on &c., at &c., being 119. Not then the owner of a certain fishing weir there, called —, ^{making, &c.,} free gaps in which was without a legal free gap at the time of the commencement of "The Salmon Fishery Act, 1861," to wit, (Id. s. 28(1).) on the first day of October, 1861, unlawfully did not then, being within twelve months after the said first day of October, make such free gap,

[*or from the asterisk**, in which was lawfully made a (Id. (2).)
free gap, unlawfully did not maintain the said
free gap, in accordance with "The Salmon
Fishery Act, 1861,"

and you [*or he* the said A. B.] did not make [*or maintain*] the said free gap for — days after the said first-mentioned day, contrary, &c. [as No. 99.]

For that you [*or he* the said A. B.] on &c., at &c., un- 120. Altering lawfully made a certain alteration in the bed of a certain river there called —, in such manner as to reduce the flow of water through a certain free gap made in a certain fishing weir there, the property of E. F., contrary, &c. [as No. 99.]

For that you [*or he* the said A. B.] on &c., at &c., un- 121. Placing lawfully did place a certain obstruction [*or use a certain contrivance, or do a certain act*], to wit, —, whereby fish was then scared [*or deterred, or prevented*] from freely entering and passing up and down a certain free gap, made in a certain fishing weir there, the property of E. F., contrary, &c. [as No. 99.]

For that you [*or he* the said A. B.] on &c., at &c., being 122. Not ob- then the owner of a certain fishing weir [*or fishing mill* serving rules dam] there * that had attached thereto a certain box [*or crib*] in contravention of "The Salmon Fishery Act, 1861," as to con- unlawfully did not bring the same into conformity with the said act, within six months after the commencement of the said act, to wit, the first day of October, 1861, and you [*or he* the said A. B.] unlawfully did fail therein [*or fail to* boxes and cribs in fish- ing weirs, &c.]

24 & 25 Vict. maintain the same] for —— days after the expiration of the c. 109. said period of six months, contrary, &c. [as No. 99.]

123. Owner constructing walls to fishing weirs, &c. (Id. s. 30.) *Proceed to the asterisk* in the last form, then:*—to a certain box [or crib] therein, there was then unlawfully attached a certain spur [or tail] wall [or leader, or outrigger] of a greater length than twenty feet from the upper or lower side of the said box [or crib], and the same wall [or as the case may be] was continued there for —— days thereafter, contrary, &c. [as No. 99.]

124. Conviction for all the above described offences. (Id. s. 35.)

No. 40, Oke's "Formulist," 3rd ed., p. 40.

125. Forms for enforcing the conviction, No. 26. (Id.)

Distress Warrant, Commitment, &c., Nos. 59—64, Oke's "Formulist," 3rd ed., pp. 51, 54.

126. Information on oath to ground search warrant for salmon, nets, &c. (Id. s. 34.)

Proceed as in the General Form, No. 1, Oke's "Formulist," pp. 23, 24, to the asterisk, then:*—that he the said C. D. hath probable cause to suspect, and doth suspect and verily believe, that a breach of the provisions of "The Salmon Fishery Act, 1861," has been lately committed in certain

[or that certain salmon were on the —— day of —— instant, illegally taken from a certain river there, called the ——, or that certain illegal nets or engines are concealed in certain]

premises, to wit, a —— in the occupation of A. B. at —— in the said county; and that the grounds of such, the suspicions of the said C. D., are as follow, namely [here state them].

127. Search warrant thereon. (Id.)

To E. F., inspector of salmon fisheries [or water bailiff, or conservator, or constable, or police officer] of ——.

Whereas information on oath hath this day been made to me the undersigned, one of her Majesty's justices of the peace in and for the said county of ——, by C. D. of &c., that [&c. as in the information, No. 126, supra, to the end]: These are, therefore, in her Majesty's name, to authorize and empower you the said inspector [or as the case may be], within one week from the date hereof, to enter the premises above described for the purpose of detecting the offence above mentioned [or the said concealed fish] at such time or times in the day or night, as you may think necessary and expedient, and to seize all illegal engines, or any salmon illegally taken, that may be found by you on the said

1.—*English Salmon Fisheries.*

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premises, in order to the same being dealt with according ^{24 & 25 Vict.}
^{c. 109.}

Given under my hand and seal this — day of —,
in the year of our Lord —, at — in the county afore-
said.

J. S. (L.S.)

2. SCOTCH SALMON FISHERIES.²³

The act for Scotland corresponding to the Eng- ^{2. Scotch salmon}lish act 24 & 25 Vict. c. 109, is “The Salmon ^{mon}*fisheries.* Fisheries (Scotland) Act, 1862,” 25 & 26 Vict. c. 97, which has been amended by 26 & 27 Vict. c. 50. The other acts are the 9 Geo. 4, c. 39, and the Tweed Fisheries Acts of 1857 and 1859, named in note ², *ante*, p. 295.

3. IRISH FISHERIES.²³

The acts as to Irish Fisheries are:—5 & 6 Vict. ^{3. Irish}*fisheries.* c. 106; 11 & 12 Vict. c. 92; 13 & 14 Vict. c. 88; and 26 & 27 Vict. c. 114.

4. SALMON EXPORTATION.

The Act 26 Vict. c. 10, intituled “An Act for ^{4. Salmon}*exportation.* Prohibiting the Exportation of Salmon at certain Times,” passed on the 20th April, 1863, recites—

“Whereas the sale of salmon within the United ^{26 Vict. c. 10.} Kingdom is prohibited at various times; that is to say, if caught in England within the limits of the Salmon Fishery Act, 1861, is prohibited between the third day of September and the second day of February; ²⁴ if caught in any fishery district in Ireland is prohibited during such time as the capture

²³ The length of these acts, which, if inserted, would increase the bulk of this work at least one half, preclude our giving them.

²⁴ 24 & 25 Vict. c. 109, s. 19, *ante*, p. 306.

^{26 Vict. c. 10.} of salmon is prohibited in that district ;²⁵ if caught in Scotland within the limits of “The Salmon Fisheries (Scotland) Act, 1862,” is prohibited between the commencement of the latest and the termination of the earliest annual close time fixed for any district ;²⁶ if caught in the river Tweed, as defined by “The Tweed Fisheries Amendment Act, 1859,” is prohibited between the fourteenth day of September and the fifteenth day of February :²⁷ And whereas the capture or possession of foul or unseasonable salmon within the limits of the United Kingdom is prohibited at all times : And whereas the provisions of the said acts are evaded by the exportation for sale in France and other foreign countries of salmon that cannot legally be sold within the limits of the United Kingdom,” and enacts as follows :

Short title.

Sect. 1.

“Parts beyond seas” defined.

Sect. 2.

Export of unclean or unseasonable salmon, or salmon caught at certain times, prohibited.

Sect. 3.

1. This act may be cited for all purposes as “The Salmon Acts Amendment Act, 1863.”

2. No part of the United Kingdom, however situated with regard to any other part, shall be deemed for the purposes of this act to be parts beyond seas.²⁸

3. No unclean or unseasonable salmon, and no salmon caught during the time at which the sale of salmon is prohibited in the district where it is caught, shall be exported or entered for exportation from any part of the United Kingdom to parts beyond seas.²⁹

All salmon exported or entered for exportation in contravention of this section shall be forfeited, and the person exporting or entering the same for exportation shall be subject to a penalty not exceeding

²⁵ See 26 & 27 Vict. c. 114, s. 21.

²⁶ 25 & 26 Vict. c. 97, s. 6, authorizes the commissioners to determine the annual close time in Scotland, which is to be 168 days (s. 7). By s. 9 the close time in 9 Geo. 4, c. 39, is to subsist until altered, i. e., between the 14th Sept. and 1st Feb. (s. 1).

²⁷ 22 & 23 Vict. c. lxx. s. 6.

²⁸ In other words, the sending of such salmon from one part of the kingdom to another part is not within this act.

five pounds in respect of each salmon so exported ^{26 Vict. c. 10.} or entered for exportation.

The burden of proving that any salmon entered for exportation from any part of the United Kingdom to parts beyond seas between the third day of September and the second day of February following is not so entered in contravention of this act shall lie on the person entering the same for exportation.²⁹

4. All penalties under this act may be recovered in England, except within the limits of the said Tweed Fisheries Act, as penalties under the Salmon Fishery Act, 1861 ;³⁰—in Ireland as penalties under the act passed in the session of the fifth and sixth years of the reign of her present majesty, chapter one hundred and six, intituled An Act to regulate the Irish Fisheries ;—in Scotland, except within the limits of the said Tweed Fisheries Act, as penalties under the Salmon Fisheries (Scotland) Act, 1862 ;—and within the limits of the said Tweed Fisheries Act, in manner prescribed by “The Tweed Fisheries Act, 1857.”

Recovery of
Penalties.

Sect. 4.

F O R M .

For that you [or he the said A. B.] on &c., at &c., un-
lawfully did export [or enter for exportation] from —
aforesaid, to parts beyond seas, to wit, to [France], certain
unclean and unseasonable salmon,

128. Export-
ing, &c. un-
clean or un-
seasonable
salmon.

[or certain salmon caught at —, during the time at (26 Vict. c.
which the sale of salmon was then prohibited 10, s. 3.)
there],
to wit, [five boxes containing eighty salmon], contrary to
section 3 of “The Salmon Acts Amendment Act, 1863.”

²⁹ Throwing on the vendor or person charged the onus of proving that the salmon has been imported from abroad, or has been legally caught.

³⁰ See 24 & 25 Vict. c. 109, s. 35, *ante*, p. 315, and note ³⁰, for recovery of penalty in England. *Vide* form of statement of offences, *infra*.

CHAPTER XXII.

STEALING OR INJURING DOGS IN ENGLAND AND
IRELAND.

BEFORE the statute law provided for the stealing of a dog it was no offence, it not being a chattel or goods; nor is it now within the operation of section 88 of the 24 & 25 Vict. c. 96, as to obtaining property by false pretences.¹

^{24 & 25 Vict. c. 96.} The Larceny Consolidation Act of 1861, 24 & 25 Vict. c. 96, s. 18, enacts,—“ Whosoever shall steal any dog shall, on conviction thereof before two justices of the peace, either be committed to the common gaol or house of correction, there to be imprisoned, or to be imprisoned and kept to hard labour, for any term not exceeding six months,—or shall forfeit and pay, over and above the value of the said dog, such sum of money, not exceeding twenty pounds,—as to the said justices shall seem meet.²

^{Second offence (indictable).} “ And whosoever, having been convicted of any such offence, either against this or any former act of parliament³, shall afterwards steal any dog, shall be guilty of a misdemeanor,⁴—and being convicted

¹ See *ante*, p. 36, Chap. I; and *Reg. v. Robinson*, 1 Bell, C. C. 34; 28 L. J. (N.S.) M. C. 58; 32 Law T., N. S., 302; 23 J. P. 70.

² See *post*, p. 332, for the “ procedure ” for the recovery of penalties. Form of Statement of Offence, No. 129, p. 334.

³ The act previous to this, as to stealing dogs, was the 8 & 9 Vict. c. 47, which was repealed by 24 & 25 Vict. c. 95, from 31st Oct. 1861.

⁴ For the procedure in these indictable offences and the proof of the former conviction, see *ante*, pp. 187, 188.

thereof shall be liable, at the discretion of the 24 & 25 Vict. court, to be imprisoned for any term not exceeding eighteen months, with or without hard labour.”

Sect. 19 enacts,—“ Whosoever shall unlawfully have in his possession or on his premises ^{c. 26.} ⁵ any stolen dog, or the skin of any stolen dog, *knowing such dog to have been stolen* or such skin to be the skin of a stolen dog, shall, on conviction thereof before two justices of the peace, be liable to pay such sum of money, not exceeding twenty pounds, as to such justices shall seem meet;⁶

“ And whosoever, having been convicted of any such offence, either against this or any former act of parliament,⁷ shall afterwards be guilty of any such offence as in this section before mentioned, shall be guilty of a misdemeanor,⁸—and being convicted thereof shall be liable, at the discretion of the court, to be imprisoned for any term not exceeding eighteen months, with or without hard labour.”

Sect. 20 enacts,—“ Whosoever shall corruptly take any money or reward, directly or indirectly, under pretence or upon account of aiding any person to recover any dog which shall have been stolen, or which shall be in the possession of any person not being the owner thereof, shall be guilty of a misdemeanor,⁹—and being convicted thereof shall be liable, at the discretion of the court, to be imprisoned for any term not exceeding eighteen months, with or without hard labour.”

Sect. 22 enacts,—“ If . . . any dog . . . or the skin thereof, . . . shall be found in the possession

Possession of
stolen dogs.

Sect. 19.

Sect. 19.

Sect. 20.

Sect. 20.

Sect. 20.

money to re-

store dogs

(indictable).

Justices to
restore dog to
owner.

⁵ In the Metropolitan Police District and City of London, the s. 24 of 2 & 3 Vict. c. 71, which gives jurisdiction to the magistrates to punish a person brought before them “ having in his possession or conveying in any manner *anything* which may be reasonably suspected of being stolen or unlawfully obtained,” does not appear to apply to dogs, and is generally acted upon as applying to goods and chattels only.

⁶ See note ², *ante*, p. 330.

⁷ See note ², *ante*, p. 330.

⁸ See note ⁴, *ante*, p. 330.

24 & 25 Vict. or on the premises of any person, any justice may
c. 96. restore the same . . . to the owner thereof."⁹

Procedure under 24 & 25 Vict. c. 96. The procedure both in England and Ireland in respect of the summary offences above named will be precisely as pointed out in Chap. XIV., *ante*, pp. 185—187.

24 & 25 Vict. c. 97. The Malicious Injuries Consolidation Act of 1861, 24 & 25 Vict. c. 97, s. 41, enacts,—“Whosoever shall unlawfully and maliciously kill, maim or wound any dog, bird, beast or other animal, not being cattle, but being either the subject of larceny at common law,¹⁰—or being ordinarily kept in a state of confinement, or for any domestic purpose,¹¹—shall, on conviction thereof before a justice of the

⁹ Sect. 40 of the 2 & 3 Vict. c. 71, empowering magistrates in the metropolitan police district and City of London to order the delivery of “goods” unlawfully detained to the owner, does not, for the reason given in note ⁵, *supra*, p. 331, apply to a dog.

¹⁰ Cattle are excepted because the wounding of them is an indictable offence under the provisions of sect. 40. Birds, beasts and animals which are the subject of larceny at common law and within this section, being those fit for food, may be divided into those which are punishable on indictment as for larceny at common law, those which are punishable on indictment by statute, and those which are punishable summarily, viz., 1st, those which are punishable on indictment as for larceny at common law, are,—swans, if marked, or whether marked or not, if in a private river or pond; fish in a tank, &c. (*ante*, p. 284); pigeons, although they have free access to the open air (p. 338, note ⁷); all domestic animals which serve for food, as swine, poultry and the like; game in a mew or breeding-place, or under hens, or otherwise reclaimed or reduced into possession (*ante*, pp. 35, 36), but not when *feræ naturæ*; 2nd, those which are punishable under indictment by statute are, sheep (s. 10); and 3rd, those which are punishable summarily are, deer (*ante*, p. 182, &c.), birds of game not reclaimed (*ante*, p. 115, &c.), hares and conies in warrens, *ante*, p. 193, fish in streams of water (*ante*, pp. 285, 286), house doves or pigeons when not confined (*post*, p. 338).

¹¹ These animals, when stolen, are the subject of a summary conviction under 24 & 25 Vict. c. 96, s. 21, *post*, p. 336, which see and note ¹ thereto. It will sometimes include pigeons mentioned in s. 23, p. 338.

peace, at the discretion of the justice, either be committed to the common gaol or house of correction, there to be imprisoned only, or to be imprisoned and kept to hard labour, for any term not exceeding six months,—or else shall forfeit and pay, over and above the amount of injury done, such sum of money not exceeding twenty pounds—as to the justice shall seem meet; [“Procedure,” *infra.*]

“And whosoever, having been convicted of any such offence, shall afterwards commit any of the said offences in this section before mentioned, and shall be convicted thereof in like manner, shall be committed to the common gaol or house of correction, there to be kept to hard labour for such term not exceeding twelve months as the convicting justice shall think fit.” [“Procedure,” *infra.*]

The summary procedure under this act, both in England and Ireland, is similar to that under the Larceny Act, 24 & 25 Vict. 96, *ante*, pp. 185—187, Chap. XIV., the enactments being only numbered differently (see 24 & 25 Vict. c. 97, ss. 61—70, and 76, sect. 62 not applying to Ireland as provided by 25 & 26 Vict. c. 50, s. 2), and like the offence under c. 96, may under this c. 97, be prosecuted in Ireland before one justice in, or two justices out of, petty sessions. For the mode of proving the former conviction, see s. 70; in addition to which there must be evidence of the identity of the offender.

For the punishment of cruelty to a dog, see 12 & 13 Vict. c. 92; or using them for draught out of or poisoning dogs. London, 17 & 18 Vict. c. 60, s. 2 (Oke’s “Synopsis,” 8th ed., p. 264); in the metropolitan police district, 2 & 3 Vict. c. 47, s. 56; or in the City of London, 2 & 3 Vict. c. xciv. s. 39. For placing poisoned grain, seed or meal to destroy dogs, see 26 & 27 Vict. c. 113, *ante*, p. 125, Chap. IX.



24 & 25 Vict.
c. 96.

129. Stealing
a dog.
(Id. s. 18.)

FORMS.¹²

For that you [or he the said A. B.] on &c., at &c., unlawfully did steal a certain dog, to wit, a greyhound, of the price and value of —, the property of C. D., contrary, &c.

130, 130a.
Complaint
to ground
search war-
rant for a
stolen dog,
and search
warrant.

131. Having
a stolen dog.
(Id. s. 19.)

132. Convic-
tion where
imprison-
ment only
ordered.

133. Convic-
tion where
penalty, &c.
ordered.

134. Commit-
ments.

135. The like
offences as in
forms 129,
131, second
conviction
(indictable).
(Id. ss. 18,
19.)

136. Corrupt-
ly taking re-
ward as to
stolen dog
(indictable).
(Id. s. 20.)

These may be easily drawn from forms Nos. 68, 69, Chap. XIV., ante, pp. 188, 189.

For that you [or he the said A. B.] on &c., unlawfully did have in your [or his] possession, [or on your or his premises] there, a certain stolen dog [or the skin of a certain stolen dog], to wit, a greyhound, the property of one C. D. [or the said C. D. the complainant] by a certain ill-disposed person unknown then lately before unlawfully stolen, you [or he the said A. B.] well knowing the said dog to have been unlawfully stolen [or the said skin to be the skin of a stolen dog], contrary, &c.

Form I 3 in schedule to 11 & 12 Vict. c. 43.

Form No. 56, *ante*, p. 163, *the adjudication being*,—“to forfeit and pay the sum of —, over and above the value of the said dog, and for the said dog the further sum of —, to be respectively paid and applied, &c.”

Schedule P 1, or O 1, in 11 & 12 Vict. c. 43.

These will be the same as Nos. 129, 131, supra, adding at the conclusion,—“he the said A. B. having been previously convicted of the like offence.”

For that he the said A. B., on &c., at &c., unlawfully and corruptly did take from [the said] C. D., certain money and reward, to wit, the sum of —, under pretence [or upon account] of aiding the said C. D., to recover a certain dog of him the said C. D., before then unlawfully stolen [or dog, then in the possession of E. F., not being the owner thereof], he the said A. B. not having aided in any way the recovery of the said dog, contrary, &c.

¹² The general forms in 11 & 12 Vict. ccs. 42, 43, will be used with these statements of offences.

For that you [*or* he the said A. B.] on &c., un- 137. Killing lawfully and maliciously did kill [*or maim, or wound*] a *or maiming* certain dog [*or bird, or beast, or animal*], to wit, a *—*, other ani- the property of C. D., the complainant, the same not being *mals.* cattle, but being the subject of larceny at common law, [*or* (24 & 25 Vict. c. 97, s. 41.) being ordinarily kept in a state of confinement, *or* for a domestic purpose], contrary, &c.

This will be described as in the last form, adding at the 138. The like, conclusion,—“he the said A. B. having been previously second offence (Id.) convicted of the like offence.”



CHAPTER XXIII.

STEALING OR INJURING BIRDS, BEASTS, &C., NOT
BEING GAME, IN ENGLAND AND IRELAND.

THE law is defective in not giving a summary remedy before justices for the taking of other birds than those protected by the Game Laws and the enactments given in this chapter, as pointed out at p. 25. The enactments of 24 & 25 Vict. c. 96, relate to birds kept in confinement, which are not fit for food.

24 & 25 Vict.
c. 96.

Stealing
beasts or
birds ordi-
narily kept in
confinement,
and not the
subjects of
larceny.

The Larceny Consolidation Act of 1861, 24 & 25 Vict. c. 96, s. 21 enacts,—“ Whosoever shall steal any bird, beast or other animal ordinarily kept in a state of confinement or for any domestic purpose, not being the subject of larceny at common law¹,—

¹ The beasts, birds and animals which are *not* the subject of larceny at common law, (*i. e.*, simple larceny, punishable on indictment or summarily in petty sessions under the acts mentioned in note ¹⁰, p. 32,) and are within the operation of this section, are,—bears, foxes, monkeys, apes, polecats, cats, ferrets, thrushes, singing birds in general, parrots and squirrels, and others, probably kept for whim, profit or pleasure, as badgers, hawks, herons, falcons, goats, rooks,—for all these are animals *feræ naturæ*, and although reclaimed, do not serve for the food of man. Dogs are also within this category, but the taking of them is punishable under a distinct section (*ante*, p. 330), and so are horses (by indictment, s. 10). See *ante*, p. 36, note ²⁰. The birds and animals which are “the subject of larceny at common law,” we have named in note ¹⁰, *ante*, p. 332, to 24 & 25 Vict. c. 97, s. 41, which applies to them as well as to those in this section. Of course the enactments in this chapter obviously do not extend to any bird or beast protected by the Game Laws, the birds, &c., not being in the condition here defined, and when reclaimed they are the subject of larceny at common law, a condition excluded by the terms of this section.

or shall wilfully kill any such bird, beast, or animal, ^{24 & 25 Vict.}
 with intent to steal the same or any part thereof,^{c. 96.}— shall, on conviction thereof before a justice of the peace, at the discretion of the justice, either be committed to the common gaol or house of correction, there to be imprisoned only, or to be imprisoned and ^{Sect. 21.} kept to hard labour for any term not exceeding six months,—or else shall forfeit and pay, over and above the value of the bird, beast, or other animal, such sum of money, not exceeding twenty pounds, —as to the justice shall seem meet;³

“ And whosoever, having been convicted of any such offence, either against this or any former act of parliament,⁴ shall afterwards commit any offence in this section before mentioned, and shall be convicted thereof in like manner, shall be committed to the common gaol or house of correction, there to be kept to hard labour for such term not exceeding twelve months as the convicting justice shall think fit.”⁵

Sect. 22 enacts,—“ If any such bird, or any of the plumage thereof, or any dog,⁵ or any such beast, or the skin thereof, or any such animal, or any part thereof, shall be found in the possession or on the premises of any person, any justice may restore the same respectively to the owner thereof;⁶

“ And any person in whose possession or on whose premises such bird or the plumage thereof, or such beast or the skin thereof, or such animal or any part thereof, shall be so found, (such person knowing that the bird, beast, or animal has been stolen, or that the plumage is the plumage of a stolen bird, or

³ The unlawful and malicious killing, maiming or wounding of these birds, &c., as well as those which are the subject of larceny at common law, is punishable under 24 & 25 Vict. c. 97, s. 41, *ante*, p. 332.

⁴ *Vide post*, p. 338, for the “ procedure ” in these cases.

⁵ The last preceding act was 7 & 8 Geo. 4, c. 29, s. 31.

⁶ The stealing, &c., of dogs is provided for *ante*, p. 330.

⁶ A search warrant may be granted for the purpose of having the dog, bird, &c., before the justice, see s. 103, *ante*, p. 186.

24 & 25 Vict. that the skin is the skin of a stolen beast, or that the
c. 96. part is a part of a stolen animal,) shall, on conviction before a justice of the peace, be liable for the first offence to such forfeiture, and for every subsequent offence to such punishment, as any person convicted of stealing any beast or bird is made liable to by the last preceding section” [i. e., sect. 21, *ante*, p. 337.]

Killing pigeons.

Sect. 23.

Procedure.

Poisoned grain, &c.

Penalty, &c. Sect. 23 enacts,—“Whosoever shall unlawfully and wilfully kill, wound, or take any house dove or pigeon under such circumstances as shall not amount to larceny at common law,⁷ shall, on conviction before a justice of the peace, forfeit and pay, over and above the value of the bird, any sum not exceeding two pounds.” [“Procedure,” *infra*.]

The summary procedure in England and Ireland will be as in Chap. XIV., *ante*, pp. 185—187.

Injuring birds, &c., by placing poisoned grain, &c., on grounds, &c., is punishable by 26 & 27 Vict. c. 113, s. 3, *ante*, p. 125.

⁷ It is larceny at common law (*i. e.*, simple larceny, punishable on indictment) to take house doves or pigeons, being fit for food, when reclaimed and reduced into possession, as in a dove-cote, or shut up in their boxes every night; and, indeed, also when tamed, although unconfined, with free access at their pleasure to the open air (*Reg. v. Cheaffer*, 2 Den. C. C. 361; 21 L. J. (N. S.) M. C. 43; 15 J. P. 301; Roscoe’s Ev. in Cr. Cas., 5th ed., p. 601; Arch. Cr. Pl., by Welsby, 15th ed. p. 276). If the dove or pigeon is not reclaimed, so as to be capable of a felonious taking, then this section will operate; but if the pigeon be quite *ferae naturae*, it is not property, and not within this section or the common law. In a recent case (*Taylor v. Newman*, 32 L. J. (N. S.) M. C. 186; 8 Law T., N. S., 424; 27 J. P. 502), however, it has been held that this section does not apply where a party, under a claim of right, and after notice to the owner that he would do so, killed a pigeon belonging to a neighbour which was doing mischief upon his own land (see *ante*, pp. 37, 38). In Scotland the taking of pigeons is theft, and such a defence would not avail the offender (Irvine, G. L. 19). In Ireland, it is also an offence punishable summarily by 10 Will. 3, c. 8, s. 8 (Chap. XIX., *ante*, p. 271).

FOR M S.⁸24 & 25 Vict.
c. 96.

For that you [or he the said A. B.] on &c., at &c., unlawfully did steal [or unlawfully and wilfully did kill with intent then to steal the same], a certain bird [or beast], to wit, a parrot [or fox, or ferret], of the price and value of —, the property of [the said] C. D., the complainant, which was then and ordinarily kept in a state of confinement [or for a domestic purpose, the said — not being the subject of larceny at common law], contrary, &c.

These may be easily drawn from the forms Nos. 68 and 140, 140a. 69, ante, pp. 188, 189.

For that he the said A. B. on &c., at &c., unlawfully had in his possession [or on his premises] there, and the same was there found, a certain bird [or beast], to wit, a —, of the price and value of —, [or the plumage of a certain bird, or the skin of a certain beast, or a certain animal, or part of a certain animal, called —], the property of [the said] C. D., the complainant, which had been theretofore and ordinarily kept in a state of confinement [or for a domestic purpose], not being the subject of larceny at common law, and which had then lately before been unlawfully stolen by a certain evil-disposed person [or by a person whose name is unknown], he the said A. B. then and there well knowing the said bird [or beast, or as the case may be] to have been unlawfully stolen, [or that the said plumage was the plumage of a stolen bird, or that the said skin was the skin of a stolen beast, or that the said part was the part of a stolen animal], contrary, &c.

These will be the same as Nos. 139, 142, supra, adding at the conclusion,—“he the said A. B. having been previously convicted of the like offence.”

For that you [or he the said A. B.] on &c., unlawfully and wilfully did kill [or wound, or take] a certain house dove [or pigeon] of the price and value of —, the property of [the said] C. D., the complainant, under such circumstances as did not amount to larceny at common law, contrary, &c.

Same as Nos. 132, 133, 134, ante, p. 334.

144. Convic-
tions and
commit-
ments.

⁸ These statements of offences are to be used with the general forms in 11 & 12 Vict. c. 43.

CHAPTER XXIV.

TABULAR LIST OF PENALTIES IN ENGLAND.¹

1. *For Offences under the 1 & 2 Will. 4, c. 32, infra.*
2. *For Offences under the Night Poaching Acts, p. 343.*
3. *For Offences as to Hares, Conies and Deer, p. 343.*
4. *For Offences under the Poisoned Grain and Poaching Prevention Acts, p. 344.*
5. *For Offences under Excise Laws, p. 345.*
6. *For Offences as to Fish and Fisheries, p. 346.*
7. *For Offences as to Dogs, Birds, Beasts, &c., p. 349.*

* * * The third column shows the number of Justices necessary to hear the case or convict.

1. FOR OFFENCES UNDER THE 1 & 2 WILL. 4, C. 32.²

Offence.	Statute.	No. of Justices.	Penalty or Punishment.
1. <i>Trespass.] In the daytime on land in search of game, &c. (ante, p. 98).</i>	1 & 2 Will. 4, c. 32, s. 30.	One.	Not exc. £2.
2. By five or more together (ante, p. 99).	Id.	One.	Not exc. £5 each.
3. Trespassers refusing to tell name, &c., or refusing to quit land (ante, p. 102).	Id. s. 31.	One.	Not exc. £5 each.

¹ Some of these penalties for offences apply to the United Kingdom, and others to England and Ireland, as stated at the commencement of the Chapters in which they are placed, as well as here in the third or fourth column (U. K. or E. & I., *as the case may be*). Where not otherwise stated the offences apply to England only.

² *Vide Chap. XII., ante, pp. 150—165, for the procedure, time, imprisonment, &c., for these offences.*

Offence.	Statute.	No. of Justices.	Penalty or Punishment.
4. Five or more trespassers armed and using violence to keeper, &c. (<i>ante</i> , p. 103).	1 & 2 Will. 4, c. 32, s. 32.	Two.	Not exc. £5 each in addition to other penalties.
5. Trespass in her majesty's forests, &c. (<i>ante</i> , p. 104).	Id. s. 33.	One.	Not exc. £2.
6. <i>Licence to kill.</i>] Killing or using gun, &c. to kill game, without licence (<i>ante</i> , p. 115).	Id. s. 23.	Two.	Not exc. £5 (cumulative on offence, No. 38, p. 345).
7. Officers in the army or navy taking game without leave (<i>ante</i> , pp. 118, 119).	Mutiny Acts.	One.	£5. (U. K.)
8. <i>Poison.</i>] Laying poison to kill game (<i>ante</i> , p. 121).	1 & 2 Will. 4, c. 32, s. 3.	Two.	Not exc. £10.
9. <i>Eggs.</i>] Taking or destroying or having the eggs of birds of game, &c. (<i>ante</i> , p. 122).	Id. s. 24.	Two.	Not exc. 5s. each egg.
10. <i>Sunday, &c.</i>] Killing, &c. game on Sunday or Christmas-day (<i>ante</i> , pp. 46, 47).	Id. s. 3.	Two.	Not exc. £5.
11. <i>Seasons.</i>] Killing, &c. certain birds of game out of season (<i>ante</i> , p. 47).	Id.	Two.	Not exceeding £1 for every head of game.
12. <i>Buying and selling game.</i>] Unlicensed person selling game to any person, or to a licensed dealer (<i>ante</i> , p. 146).	Id. s. 25.	Two.	Not exceeding £2 for every head of game. (U. K.)

Offence.	Statute.	No. of Justices.	Penalty or Punishment.
13. Unlicensed person buying from an unlicensed person (<i>ante</i> , p. 147).	1 & 2 Will. 4, c. 32, s. 27.	Two.	Not exceeding £5 for every head of game. (U. K.)
14. Buying or selling birds after ten days from expiration of season, or having same forty days thereafter (<i>ante</i> , p. 145).	Id. s. 4.	Two.	Not exceeding £1 for every head of game. (U. K.)
15. Persons assuming to be licensed to deal in game (<i>ante</i> , p. 148).	Id. s. 28.	Two.	Not exc. £10. (U. K.)
16. <i>Licensed dealers.</i>] Buying, &c. game from an unlicensed person,—or selling same without board affixed to shop,—or affixing board to more than one house,—or selling at other places (<i>ante</i> , p. 139).	Id. s. 28.	Two.	Not exc. £10, and licence void (see s. 22, <i>ante</i> , p. 134). (U. K.)
17. Buying, selling or having birds after ten days from expiration of season (<i>ante</i> , p. 187).	Id. s. 4.	Two.	Not exc. £1 for every head of game, and licence void. (U. K.)
18. <i>Occupiers.</i>] Pursuing, killing, &c. game on land, or giving permission to do so, without authority (<i>ante</i> , p. 83).	Id. s. 12.	Two.	Not exc. £2 for pursuit, and not exc. £1 for every head of game killed.
19. <i>Witnesses.</i>] Not attending summons, or refusing to be examined (<i>ante</i> , p. 156).	Id. s. 40.	One or two.	Not exc. £5.

2. FOR OFFENCES UNDER THE NIGHT POACHING ACTS.³

Offence.	Statute.	No. of Justices.	Penalty or Punishment.
20. By night taking and destroying game or rabbits on land, or any public road, or the sides thereof, or the outlets from land;—or entering or being on land with gun, &c., for taking game (<i>ante</i> , pp. 168, 169).	9 Geo. 4, c. 69, s. 1; 7 & 8 Vict. c. 29, s. 1.	Two. (U. K.)	<i>1st offence.</i> Impr. not exc. 3 calendar months, and sureties for one year more, and in default, 6 months imprisonment. <i>2nd offence.</i> Double the impr. and sureties.
21. The like, third offence (<i>ante</i> , p. 170).	Id.	(Indictable Misdemeanor.)	Pen. serv. not exc. 7 nor less than 3 yrs.—or impr. not exc. 2 yrs. (U. K.)
22. Offenders found committing offences No. 20, and assaulting game-keeper with gun, &c. (<i>ante</i> , p. 171).	9 Geo. 4, c. 69, s. 2.	(Id.)	The same.
23. Three or more by night entering land to take game or rabbits, one being armed (<i>ante</i> , p. 174).	Id. s. 9.	(Id.)	Pen. serv. not exc. 14 nor less than 3 yrs.—or impr. not exc. 3 yrs. (U. K.)
24. Taking, &c. hares or conies in warrens by night (<i>ante</i> , p. 193).	24 & 25 Vict. c. 96, s. 17.	(Id.)	Fine, or impr., or both. (E. & I.)
3. FOR OFFENCES AS TO HARES, CONIES AND DEER. ⁴			
25. <i>Hares.</i>] Taking or killing hares or conies in warrens in daytime,—or setting snares, &c. for them (<i>ante</i> , p. 193).	24 & 25 Vict. c. 96, s. 17.	One.	Not exceeding £5. (E. & I.)

³ *Vide* Chap. XIII., *ante*, pp. 176—179, for the procedure under 9 Geo. 4, c. 69; and Chap. XIV., *ante*, pp. 185—187, under 24 & 25 Vict. c. 96.

⁴ *Vide* Chap. XIV., *ante*, pp. 185—187, for the procedure.

Offence.	Statute.	No. of Justices.	Penalty or Punishment.
26. <i>Conies.</i>] See offences under 1 & 2	Will. 4, c.	32, and Nos. 20 to 25 inclusive.	
27. <i>Deer.</i>] Coursing, taking, &c. deer in uninclosed part of forest, &c. (<i>ante</i> , p. 182).	24 & 25 Vict. c. 96, s. 12.	One.	1st offence. Not exc. £50. (E. & I.)
28. The like, second offence	Id.	(Indictable Felony).	Impr. not exc. 2 years. (E. & I.)
29. The like offence, as No. 27, in inclosed ground (<i>ante</i> , p. 183).	Id. s. 13.	(Id.)	The same.
30. Unlawful possession of deer or venison, or skin, or snare, &c. for taking (<i>ante</i> , p. 183).	Id. s. 14.	One.	Not exc. £20. (E. & I.)
31. Setting engines, &c. for deer, or destroying fence of land (<i>ante</i> , p. 184).	Id. s. 15.	One.	Not exc. £20. (E. & I.)
32. Beating or wounding deerkeepers (<i>ante</i> , p. 185).	Id. s. 16.	(Indictable Felony.)	Impr. not exc. 2 years. (E. & I.)

4. FOR OFFENCES UNDER THE POISONED GRAIN AND POACHING PREVENTION ACTS.⁵

33. Selling poisoned grain, seed or meal (<i>ante</i> , p. 124).	26 & 27 Vict. c. 113, s. 2.	Two.	Not exc. £10. (U. K.)
34. Setting or placing, &c. poisoned grain, seed or meal (<i>ante</i> , p. 125).	Id. s. 3.	Two.	Not exc. £10. (U. K.)

⁵ *Vide* Chap. IX., *ante*, pp. 127, 128, for the procedure under 26 & 27 Vict. c. 113; and Chap. XVI., *ante*, pp. 211—215, for the procedure under 25 & 26 Vict. c. 114.

Offence.	Statute.	No. of Justices.	Penalty or Punishment.
35. Found by a constable in highway, &c., suspected of coming from land, guns, game, nets, &c. being found on him, and which game was unlawfully obtained (<i>ante</i> , pp. 200—205).	25 & 26 Vict. c. 114, s. 2.	Two.	Not exc. £5, and forfeiture of game, gun, nets, &c. (U. K.)
36. The like, which nets, &c. had been unlawfully used (<i>ante</i> , pp. 200—205).	Id.	Two.	The same.
37. Aiding and abetting offenders in Nos. 35 or 36 (<i>ante</i> , pp. 200—205).	Id.	Two.	The same.

5. FOR OFFENCES UNDER EXCISE LAWS.⁶

38. Taking, or pursuing, or assisting,—or using a dog, gun, &c., for taking game, or woodcock, or coney, or deer, &c., without an excise licence (<i>ante</i> , p. 62).	23 & 24 Vict. c. 90, s. 4.	Two or more.	£20 (U. K.); but see 5 & 6 Vict. c. 81, <i>ante</i> , pp. 75, 76, as to Ireland.
39. Persons sporting not producing licence to gamekeeper, &c.,—or refusing to tell names, residences, &c. (<i>ante</i> , p. 72).	Id. s. 10.	Id.	£20. (Id.)
40. Dealer in game, whether licensed by justices or not, dealing without a licence (<i>ante</i> , p. 136).	Id. s. 14, and 24 & 25 Vict. c. 91, s. 17.	Id.	£20 (Id.)

⁶ *Vide Chap. XVII., ante*, pp. 220—224, for the procedure.

6. FOR OFFENCES AS TO FISH AND FISHERIES.⁷

Offence.	Statute.	No. of Justices.	Penalty or Punishment.
41. <i>Private Fisheries.</i>] Taking or destroying fish in water belonging to dwelling-house of owner, &c. (<i>ante</i> , p. 285).	24 & 25 Vict. c. 96, s. 24.	(Indictable Misdemeanor.)	Fine, or imprisonment, or both. (E. & I.)
42. The like, in private water elsewhere (<i>ante</i> , p. 285).	Id.	One.	Not exc. £5 above value of fish taken, &c. (E. & I.)
43. Angling in daytime in water mentioned in No. 41 (<i>ante</i> , p. 286).	Id.	One.	Not exceeding £5. (E. & I.)
44. The like, elsewhere ..	Id.	One.	Not exceeding £2. (E. & I.)
45. Damaging dam, &c. of a fish-pond,—or putting lime therein,—or destroying mill-dam, &c. (<i>ante</i> , p. 288).	24 & 25 Vict. c. 97, s. 32.	(Indictable Misdemeanor.)	Pen. serv. for not exc. 7 nor less than 3 yrs.,—or impr. not exc. 2 years. (E. & I.)
46. Officers in the army or navy taking fish without leave (<i>ante</i> , pp. 118, 119).	Mutiny Acts.	One or more.	£5. (U. K.)
47. <i>Oysters.</i>] Stealing oysters from bed of another (<i>ante</i> , p. 287).	24 & 25 Vict. c. 96, s. 26.	(Indictable Felony).	Pen. serv. for 3 yrs. or impr. not exc. 2 yrs. (E. & I.)
48. Using dredge for taking them,—or dragging net on oyster fishery (<i>ante</i> , p. 287).	Id.	(Indictable Misdemeanor).	Imprisonment not exc. 3 months. (E. & I.)
49. <i>Salmon Fisheries.</i>] Mixing poisonous substances in rivers (<i>ante</i> , p. 297).	24 & 25 Vict. c. 109, s. 5.	Two.	1st offence. Not exc. £5. 2nd and other offences. See the section.

⁷ *Vide Chap. XX., ante*, p. 285, note ⁷, for the procedure as to private fisheries, and *Chap. XXI., ante*, p. 315, as to salmon fisheries.

Offence.	Statute.	No. of Justices.	Penalty or Punishment.
50. Fishing with lights, spears, &c. (<i>ante</i> , p. 299).	24 & 25 Vict. c. 109, s. 8.	Two.	Not exc. £5, and instruments used.
51. Using fish roe as a bait, —or buying, &c., salmon roe (<i>ante</i> , p. 300).	Id. s. 9.	Two.	Not exc. £2, and roe found.
52. Using improper nets (<i>ante</i> , p. 300).	Id. s. 10.	Two.	Not exc. £5, and tackle, &c.
53. Placing or fixing fixed engines (<i>ante</i> , p. 301).	Id. s. 11.	Two.	Not exc. £10 a day, and engine and salmon forfeited.
54. Using illegal dams for catching salmon (<i>ante</i> , p. 301).	Id. s. 12.	Two.	Not exc. £5, and £1 each salmon.
55. Catching salmon near mill-dam (<i>ante</i> , p. 302).	Id.	Two.	Not exc. £2, and £1 each salmon.
56. Not erecting gratings to prevent descent of salmon into artificial streams (<i>ante</i> , p. 303).	Id. s. 13.	Two.	Not exc. £5, or £1 per day respectively (see the section).
57. Taking unclean fish (<i>ante</i> , p. 303).	Id. s. 14.	Two.	Not exc. £5 for each fish.
58. Taking the young of salmon (<i>ante</i> , p. 304).	Id. s. 15.	Two.	Not exc. £5, and rods and salmon, &c.
59. Disturbing fish when spawning (<i>ante</i> , p. 305).	Id. s. 16.	Two.	Not exc. £5.
60. Fishing in close time (<i>ante</i> , p. 305).	Id. s. 17.	Two.	Not exc. £5, and £2 each salmon.
61. Selling fish during close time (<i>ante</i> , p. 306).	Id. s. 19.	Two.	Not exc. £2 each, and fish.

Offence.	Statute.	No. of Justices.	Penalty or Punishment.
62. Owner not removing fixed engines during close time (<i>ante</i> , p. 307).	24 & 25 Vict. c. 109, s. 20.	Two.	Not exc. £10, and engines forfeited.
63. Fishing during weekly close time (<i>ante</i> , p. 307).	Id. s. 21.	Two.	Not exc. £5, and £1 each fish.
64. Not leaving passage through cribs or traps during weekly close time (<i>ante</i> , p. 308).	Id. s. 22.	Two.	Not exc. £5, and £1 each fish, and fish.
65. Obstructing person in erecting fish pass (<i>ante</i> , p. 309).	Id. s. 23.	Two.	Not exc. £10.
66. Wilfully injuring a fish pass (<i>ante</i> , p. 309).	Id.	Two.	Not exc. £5, and amount of injury.
67. Preventing salmon passing through a fish pass, &c. (<i>ante</i> , p. 309).	Id.	Two.	First offence, not exc. £5 (see the section).
68. Not attaching fish pass to future dams (<i>ante</i> , p. 310).	Id. s. 25.	Two.	Not exc. £5.
69. Not supplying water to fish pass (<i>ante</i> , p. 310).	Id. s. 26.	Two.	Not exc. 5s. per hour in default.
70. Not making free gaps in fishing weirs (<i>ante</i> , pp. 311, 312).	Id. s. 28.	Two.	Not exc. £5, and £1 per day (see the section).
71. Not observing rules as to construction of boxes and cribs in fishing weirs, &c. (<i>ante</i> , p. 313).	Id. s. 29.	Two.	Not exc. £5, and £1 per day (see the section).
72. Owner constructing walls, &c. to fishing weirs, &c. (<i>ante</i> , p. 313).	Id. s. 30.	Two.	£1 per day.

Offence.	Statute.	No. of Justices.	Penalty or Punishment.
73. Exporting unclean or unseasonable salmon (<i>ante</i> , p. 328).	26 Vict. c. 10, s. 3.	Two.	Not exc. £5 each salmon. (U. K.)
74. Stealing a dog (<i>ante</i> , p. 330).	24 & 25 Vict. c. 96, s. 18.	Two.	Impr. not exc. 6 months, or not exc. £20 above value. (E. & I.)
75. The like, second offence.	Id.	(Indictable Misdemeanor).	Impr. not exc. 18 months. (E. & I.)
76. Having possession of stolen dog, or skin (<i>ante</i> , p. 331).	Id. s. 19.	Two.	Not exc. £20. (E. & I.)
77. The like, second offence.	Id.	(Indictable Misdemeanor).	Impr. not exc. 18 months. (E. & I.)
78. Corruptly taking money to restore stolen dog (<i>ante</i> , p. 331).	Id. s. 20.	(Id.)	Impr. not exc. 18 months. (E. & I.)
79. Setting fire to crops of corn, &c. (<i>ante</i> , p. 129).	24 & 25 Vict. c. 97, s. 16.	(Indictable Felony).	Pen. serv. not exc. 14 nor less than 3 years,—or impr. not exc. 2 years. (E. & I.)
80. Killing, maiming or wounding a dog, or bird, or beast, &c. (<i>ante</i> , p. 332).	Id. s. 41.	One.	Impr. not exc. 6 months,—or not exc. £20 above injury. (E. & I.)
81. The like, second offence.	Id.	One.	Impr. not exc. 12 months. (E. & I.)
82. Stealing beast, bird or animal, not the subject of larceny at common law (<i>ante</i> , p. 336).	24 & 25 Vict. c. 96, s. 21.	One.	Impr. not exc. 6 months,—or not exc. £20 above value. (E. & I.)

⁸ *Vide Chap. XXII. and XXIII. for the procedure.*

Offence.	Statute.	No. of Justices.	Penalty or Punishment.
83. The like, second offence (<i>ante</i> , p. 337).	24 & 25 Vict. c. 96, s. 21.	One.	Impr. not exc. 12 months. (E. & I.)
84. Having possession of stolen beast, bird or animal, or skin, &c. (<i>ante</i> , p. 337).	Id. s. 22.	One.	Impr. not exc. 6 months,— or not exc. £20 above value. (E. & I.)
85. The like, second offence (<i>ante</i> , p. 338).	Id.	One.	Impr. not exc. 12 months. (E. & I.)
86. Killing, wounding or taking house doves or pigeons (<i>ante</i> , p. 338).	Id. s. 23.	One.	Not exc. £2 above value. (E. & I.)



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